February 2022

TAXADVISER

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Chartered Institute of Taxation.

Secure gift giving

The normal expenditure out of income exemption can provide a valuable way to avoid paying inheritance tax, explains Michelle Robinson

Partial exemptions

Neil Warren on the key rules for allocating input tax, along with some VAT saving tips

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HELEN WHITEMAN
JANE ASHTON

Welcome
We are delighted to present our new look *Tax Adviser* magazine.

Welcome to the first edition of our new look *Tax Adviser* magazine. We are very pleased with the modern look and hope you like the refreshed design. We are looking for new members to join our Tax Adviser committee. If you are interested and/or would like to send feedback on the new magazine, please email us at page@att.org.uk or taxadviser@tax.org.uk.

For those of you who were busy with Self-Assessment returns in January, we hope that you managed to get through the start to the year without burning too much midnight oil – and that your clients are embracing technology and not bringing in the bags of receipts that always used to be a feature at this time of year. It will have been especially hard for those of you who had staff off sick (or self-isolating) with Covid-19 or if you were off sick yourselves.

We worked very closely with HMRC to see what easements they could give to you if you were in this situation and we were pleased with the outcome. For those who file their Self-Assessment tax returns online by 28 February 2022 and either arrange payment of their tax liability in full or set up a payment plan by 1 April 2022, HMRC has confirmed that no penalties will be issued in order to give customers additional time if needed.

Our Technical and LITRG teams are busy responding to consultations and attending many meetings with HMRC on matters like Making Tax Digital for Income Tax Self-Assessment and the changes to the basis periods. We were especially pleased that both these reforms have been delayed until April 2024 after we wrote to ministers pressing for a delay. Our websites have lots of information on these areas and we will be holding webinars throughout the year, so please book on to them if these subjects are of interest.

What is on the horizon for 2022?

Later this month, we will be inviting you to take part in a member survey – please take time to complete it when you receive the invitation. It is important to us that we reflect our growing memberships and we would like to know what we can do better to support you, or indeed what you want us to keep doing. The survey is being carried out by James Law Research Associates Ltd and is anonymous but, if you want to tell us more about your experiences, there will be the opportunity later on in the year to participate in some round table events.

We will be welcoming a new Chair onto the Equality, Diversity and Inclusion Committee at our next meeting – Olayinka Iwu, who brings a wealth of experience.

Our now Joint Climate Change Working group is going from strength to strength and will be looking to further develop its role in the coming months. See the Technical pages for details of the work we are looking to do on the Woodland and Peatland codes.

Regulation of the tax profession is once again on the agenda. In November, HMRC announced that the government has decided *to consider the case for moving further towards statutory regulation* of the tax advice market. Consultation on options is promised sometime in 2022.

We will continue to be flexible and adapt our working practices, examinations and membership offering to make sure we fulfil our charitable objectives. These include advancing public education in and promoting the study of the administration and practice of taxation. We may not be able to completely stick to our plans as we have learnt, as we are sure you all have, that Covid-19 and planning beyond the next few weeks do not always go together!

Stay safe and well and enjoy the February edition!

Jane Ashton

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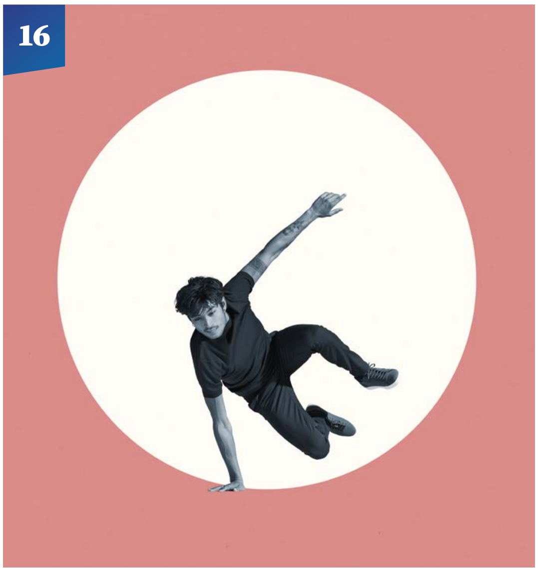

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PETER RAYNEY
PRESIDENT

Mine is a wide ranging role…

> I will use this month's President's Page to give you a glimpse of just some of my responsibilities and activities over the last six weeks or so.

These remain challenging times for us all, with Covid-19 still creating pressures in our professional and personal lives. My fervent hope is that this year I will finally be able to meet up with my friends and colleagues in the tax world.

I am often asked what I get up to as the President of the CIOT, which is a fair and reasonable question. So I will use this month's President's Page to give you a glimpse of just some of my responsibilities and activities over the last six weeks or so.

Meetings with our CEO

Virtually every week, I 'meet' with our CEO Helen Whiteman to discuss a whole range of issues. Typically, updates cover general CIOT activity, new initiatives, financials and meetings with our stakeholders, with some 'curve ball' surprises also thrown into the mix. I feel these meetings are very similar to the Queen's weekly audience with her Prime Minister – although Helen does *not* have to brief me standing on her feet! My main role is to act as a careful listener and strategic sounding board.

Fortnightly Zoom calls also take place between the Presidential Team and our senior executives. This is an ideal forum to discuss key management issues and the implementation of our various strategies and objectives, as agreed by Council. I always stress that the governance of our Institute is totally a team effort.

Strategy meeting and CIOT council

Our annual Council strategy meeting in December focused on various potential strategic initiatives in conjunction with some expert facilitators. We considered our role with tax academia, our international activities and our strategic role as trustees.

I then chaired our last Council meeting of 2021, which required debating and making various key decisions such as our 2022 budget and dealing with other CIOT formalities. This was followed by a short 'online' festive lunch supplemented by listening to an eclectic range of festive music (ranging from Bach to Queen) chosen by our Council members!

Meetings with Treasury and HMRC

We are often invited by the Treasury and HMRC for feedback and assistance on various tax initiatives and policy matters. It has been very useful to be able to discuss issues such as Making Tax Digital/basis periods, HMRC performance and simplification with the Financial Secretary to the Treasury and HMRC's Deputy Chief Executive at recent meetings. As the sensible deferral of the basis period changes illustrates, HMRC sometimes do listen and our engagement with them leads to better tax policy and administration.

New member admission ceremony

One of my highlights of the year is welcoming our newly qualified members at our virtual admission ceremony. Our events team do a fantastic job in making these a really enjoyable occasion and I feel that this setting is particularly satisfying as it enables me to speak to a very large number of new members. We welcomed six Prize winners, five CTA Fellows and 51 new Associates.

Other notable events in December

Volunteer 'Thank you' event: Once again, we treated 122 volunteers to a number of interesting 'virtual' tours with 'blue-badged tour guides' (along with some tasty snacks delivered to their homes). It always gives me great pleasure to sincerely thank our wonderful army of volunteers.
Tax Institute of Hong Kong Conference: Recording a talk on 'The future of corporate tax post-pandemic' for our Hong Kong CTA licensed body's annual conference. It was a shame I could not attend that one in person!
Christmas Carol Service: Open to all, this year's virtual carol service was again 'attended' by a large group of members, volunteers and guests (from all parts of the country – a key advantage of online events). I thoroughly enjoyed giving one of the Christmas gospel readings and saying a few words at this uplifting event.

I hope this gives you an insight into some of the wide ranging activities, responsibilities and challenges involved in serving our fantastic Institute. The fact that we have managed to carry them all out online is an amazing achievement. Massive thanks to everyone involved.

It is February, but I wish you all a very happy new year and hope you enjoy the relaunched February issue!

Peter Rayney
CIOT President
president@ciot.org.uk

Chartered Institute of Taxation.

Grow your practice with Xero Education Month this February

Want to grow your practice in 2022? Xero is giving you and your team the chance to upskill for free with a series of expert webinars.

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DAVID BRADSHAW
DEPUTY PRESIDENT

Some people think it's all over. Not yet it isn't...!

> Instead of that glorious moment of release as midnight strikes on 31 January, the January nightmare may well continue on through February!

I would be interested to learn from our many members in practice who were starting the inevitable January rush of tax returns being processed for clients (who demonstrate the naturally human trait of leaving everything to the last minute!) whether they breathed a sigh of relief or, more likely, cursed as the late-night pizza delivery arrived, when HMRC announced an effective extension of the filing deadline to 28 February 2022. I promise not to tell your clients. Let's hope no one else lets it slip – if they get wind of it, you can guarantee they will down tools immediately and stop stuffing their box files full of stubs and receipts (in no particular order!). Instead of that glorious moment of release as midnight strikes on 31 January, the January nightmare may well continue on through February!

Well, let's look on the bright side. In the good old days before online filing, we had to get our clients to sign hard copy tax returns and then deliver them to the nearest tax office, albeit by 5 April not 31 January. I remember bowling up at Newcastle 3 District after office hours and attempting to force my last tax returns through the letterbox to see them drop onto a gigantic pile of similarly delivered envelopes! Happy Days.

I look forward with trepidation to the arrival of Making Tax Digital for Income Tax Self Assessment, when one deadline could be replaced by multiple deadlines.

So, what does 2022 have in store for us? We had hoped that we would be back to the new 'normal' in 2022 but with the current government guidelines of 'working from home if you can' our plans once again have changed. We are, though, hoping to see some of you again in 2022 and we plan to hold the Prize-winners lunch and Admissions ceremony as face to face events. The Prize-winners lunch planned for March has been moved to June, by which time we are hoping that restrictions will have been lifted and we can celebrate the achievements of those of you who have not only passed our examinations but have achieved the highest marks.

Our ATT Annual Tax Conferences will stay as online only events this year. Feedback has indicated that the majority of you are happier for the time being to attend these online. This gives those who live long distances from venues the chance to join without the cost or stress of travelling and receive the same material as all our delegates.

We have already started planning for these conferences and I can assure anyone who wants to make sure their knowledge is up to date that these are very worthwhile and informative events to attend. Michael Steed (Co-Chair of our Technical Steering Group) and our Technical Officers will all be presenting at the events and available for questions in the live sessions. I for one look forward to learning more about the aforementioned Making Tax Digital for Income Tax Self-Assessment and how the change in basis periods will affect my clients. There are also Topical tax sessions and a session on crypto assets which 2.3 million people now hold.

Our return to the office is on hold, but our staff have all embraced the new ways of working and have made the move to homeworking a successful one. I miss the face to face meetings of Council and Steering Groups but we are still as productive online and I get to be at home more often, which is probably just as well with a new arrival in the house.

Yes, the pitter patter of tiny little feet. Four feet to be exact and, no, not twins – rather Bandit the rescue dog, a setter/collie cross of dubious heritage. In an operation similar to that last seen in Mission Impossible 3, the dog was handed over to us in Gretna Green on the Scottish/English border, having been collected at the Cairnryan ferry terminus following transportation from Northern Ireland and brought back to Hexham. He is only just adjusting to the change in dialect (so he is!). We are fostering him and attempting to deal with his behavioural issues before delivering him to his 'forever home'.

The only other resident of Northern Ireland that I know well is our current President. In this context, I have not been made aware of any behavioural issues or dubious heritage affecting Richard. However, I can tell you that fostering is out of the question!

David Bradshaw
ATT Deputy President
page@att.org.uk

New Tax Year, New Opportunities

Our Intelligent Software Offers an Efficient and Intuitive way to Produce Self-Assessment Tax Returns

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Partial exemption
Getting to grips

by Neil Warren

Partial exemption is a well-known problem area for many VAT registered businesses. Here are the answers to your questions about the key rules, along with some VAT saving tips.

What are the basic rules of partial exemption?

If a business only has taxable income – including zero-rated sales – it is entitled to full input tax recovery on its expenses, subject to the usual rules. If it has only exempt income, it cannot claim any input tax and, in most cases, will not be registered for VAT. The problem is when a business has both taxable and exempt income, and input tax apportionment is needed. The starting point is the concept of 'direct attribution' and the need for a business to allocate input tax on its expenses to one of three different categories – see the diagram on the right.

How is input tax apportioned between the three categories?

Think of an estate agent. The business earns exempt income from mortgage commission and taxable commission when it acts as an agent to sell a property.

If the business purchased a computer solely for the use of a mortgage broker, it will be input tax blocked because the expense wholly relates to its exempt supplies. However, it will fully claim input tax on a computer used by a sales negotiator selling houses. And a computer for the office receptionist will be treated as an overhead/mixed cost and therefore partly claimed.

It seems that 'residual input tax' is the most complicated figure. How is it apportioned?

As the default position, a business must use the standard method of calculation, which is based on its ratio of exempt income to taxable income using the following formula (expressing the result as a percentage):

$$\text{Input to claim} = \frac{\text{Taxable income (excluding VAT)}}{\text{Taxable income (excluding VAT) + exempt income}} \times 100$$

Note: If the total residual input tax figure is less than £400,000 a month on average, the percentage is rounded up to the next whole number (see VAT Notice 706 para 4.7).

The quarterly calculation is provisional and is superseded by an annual adjustment at the end of each partial exemption tax year, which is compulsory for all partially exempt businesses. The same formula is used but with annual rather than quarterly figures. A partial exemption tax year ends on 31 March, 30 April or 31 May, depending on the VAT periods of the business, or 31 March for a business on monthly returns.

So, presumably, the annual adjustment will always produce a different result compared to the quarterly calculations?

The annual adjustment can produce both under and overpayments of tax compared to the quarterly calculations. A taxpayer

Key Points

What is the issue?
Partial exemption is high risk as far as VAT errors are concerned. It is important that staff who allocate input tax between the three different expense categories understand the principles of recognising a link between an expense and either taxable or exempt income.

What does it mean for me?
If the standard method based on income ratios produces an unfair result, you could apply to HRMC to use a special method in the future. But you must certify that your proposed method gives a 'fair and reasonable' result in terms of input tax recovery.

What can I take away?
A practical use of the partial exemption de minimis limits could produce an input tax windfall of up to £7,500 on costs that relate to exempt supplies. The article illustrates how a landlord earning buy-to-let rental income can benefit from these rules.

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can either include the difference on the return at the end of the tax year or the next return.

I used to act for a members' golf club, which bought most of its fixed assets in the first calendar quarter of the year when it also earned most of its exempt income from annual golf memberships. So, it had a low input tax recovery with the quarterly calculation – because of the high percentage of exempt income – which increased when the annual adjustment was done. The annual adjustment process corrects seasonal trading variations such as this.

> **The annual adjustment can produce both under and overpayments of tax compared to the quarterly calculations.**

If the standard method produces an unfair result, can a business use a different method to work out how much residual input tax it can claim?

Yes, it can apply to HMRC in writing to use a special method, which is any method that is not the standard method. Common examples are set out in 'What are the special methods?' below.

When requesting a special method, the business must certify to HMRC that it will give a 'fair and reasonable' result in terms of input tax recovery. If it is subsequently found that the method is flawed, HMRC has the power to issue an assessment to recalculate input tax on a 'use' basis (see VAT Notice 706 para 6.2).

Note: You can apply for a special method by email: PESM@hmrc.gov.uk

What are the special methods?

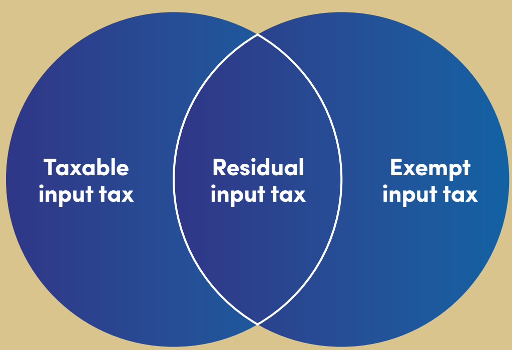
When you use a special method, you can determine your percentage recovery rate using other allocations and apportionments. You can even use a different type of calculation for each sector if you have a 'sectorised' method. Common examples of special methods for calculating residual input tax include:

- output values;
- numbers of transactions;
- staff time or numbers;
- inputs or input tax;
- square footage allocations;
- costs allocations; and
- management accounts.

You must calculate the percentage recovery rate produced in your special method to 2 decimal places.

INPUT TAX

There are three categories of input tax for a partly exempt business:



Taxable input tax	Residual input tax	Exempt input tax
Expenditure wholly relates to taxable sales (including zero-rated sales). 100% input tax claim subject to normal rules.	Expenditure has a link with both taxable and exempt income (e.g. general overheads of a business or a mixed cost) so it is partly claimed – usually based on the standard method.	Expenditure wholly relates to exempt sales. No input tax is claimed.

CASE STUDY
PARTIAL EXEMPTION SPECIAL METHOD FOR GYM

Susan and Steve are partners in a gym, where membership fees are charged (standard rated). They use part of the building to promote and sell insurance products (exempt income). The largest source of residual input tax is their property costs – rent, light and heat bills, repair costs.

In terms of fairness, a square footage method would probably be the best partial exemption method for them to use because there is a direct link between property costs and floor space. The standard method based on income ratios could produce a flawed result if, for example, the insurance commission generated 50% of total income but only used 15% of the building space.

What tips can you give a partially exempt business?

Here are two tips.

Firstly, make sure that input tax allocations between the three different categories – taxable input tax, residual input tax and exempt input tax – are carried out by an experienced member of staff.

As a general observation, there is sometimes a tendency for a business to play safe and claim the lower amount of tax. For example: 'I am not sure if this expense is "residual" or "exempt". I'll play safe and treat it as "exempt" ... so I don't upset HMRC.'

> **Make sure that input tax allocations between the three different categories are carried out by an experienced member of staff.**

There have been numerous tribunal cases where taxpayers have won disputes. For example, the issue in the case of *Folkestone Harbour (GP) Ltd* [2015] UKFTT 0101 (TC) was whether the cost of erecting an expensive fountain on public land at the entrance to a new residential development directly related to houses being built and sold by the company. The tribunal agreed with the taxpayer that input tax could be claimed because the fountain created an image of style and class and therefore a direct link to the zero-rated property sales.

Secondly, be clear that a small link between an expense and taxable activities is enough to treat the input tax as residual.

Here is an example for our estate agent:

- The agent is planning to advertise its mortgage services in a newspaper, which will cost £5,000 plus VAT.
- The input tax of £1,000 cannot be claimed because it wholly relates to exempt activities.
- But what if the advert is amended to include the phrase: 'We will also sell your house if you are thinking of moving.'
- This amendment, which might only take up 5% of the advertising space, transfers the input tax from 'exempt' to 'residual' because there is now a 'direct and immediate' link between the advert and both taxable and exempt activities.

What is meant by the phrase 'direct and immediate' link?

The phrase 'direct and immediate link' made its debut in the landmark ECJ case of *BLP* (Case C-4/94) and has largely stood the test of time.

For example, if you trade as a non-profit making theatre company, making exempt supplies of ticket sales for shows, you will probably pay a range of different production companies, which will be subject to VAT.

So, would it be possible to argue that the input tax on the fees should be treated as 'residual input tax' on the basis that if the show is good, then both exempt ticket sales and taxable bar sales will increase?

This argument is logical but the link between the production company costs and bar sales is 'indirect' – it is not sufficient to justify the expenditure being treated as residual input tax.

Can you explain the relevance of the partial exemption de minimis rules?

My personal view is that the de minimis rules should be abolished because they give a potential inputzz tax windfall of £7,500 each year on costs that relate to exempt supplies.

The main de minimis test is that exempt input tax must be less than £625 per month on average and also less than 50% of total input tax. The annual adjustment calculation always supersedes the quarterly calculations – hence why £7,500 is the relevant figure.

The rules can be used to the advantage of a business owner. Think of a sole trader retailer who also owns a flat that he rents out on a buy-to-let basis. The flat is owned in the same legal entity as his business, so is part of his VAT registration. The rental income is exempt but a careful use of the de minimis rules will create an opportunity to claim input tax on the costs of the flat, including building repairs and improvements.

I advised a business a number of years ago to spread the cost of building works over two different partial exemption tax years to utilise two de minimis limits. But the legal entities must be the same. If a sole trader jointly owns a property with his wife or civil partner, the property income is earned as a partnership; i.e. a different legal entity to the main sole trader business.

Finally, don't forget that 'exempt input tax' includes both input tax on costs that directly relate to exempt supplies and also the proportion of the residual input tax that is not claimed.

And, as a final tip, there are three de minimis tests, so if the main test doesn't work, there are two other lifelines, so to speak (see VAT Notice 706 s 11).

MORE ONLINE
tax adviser.co.uk

VAT: word games
Neil Warren on ten phrases used in VAT legislation and HMRC public notices:
bit.ly/3fmCXMW

Making Tax Digital: hidden traps
Neil Warren on whether it makes sense to deregister before 1 April 2022.
bit.ly/3Gv2cZu

Name: Neil Warren
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Profile: Neil Warren is an independent VAT author and consultant, and is a past winner of the Taxation Awards Tax Writer of the Year. Neil worked at HMRC for 13 years until 1997.

ATT Annual Conferences 2022

SAVE THE DATE

The ATT Annual conferences concentrate on topical issues with an emphasis on the practical issues faced on a daily basis by the Taxation Technician. As per last year, our conferences will be held as online events.

You will be able to choose one of the following dates to join the live sessions:
On each day, the sessions will begin at 09:30 and end at 13:00.

- Friday, 10 June 2022
- Tuesday 28 June 2022
- Wednesday 6 July 2022

Our Speakers:

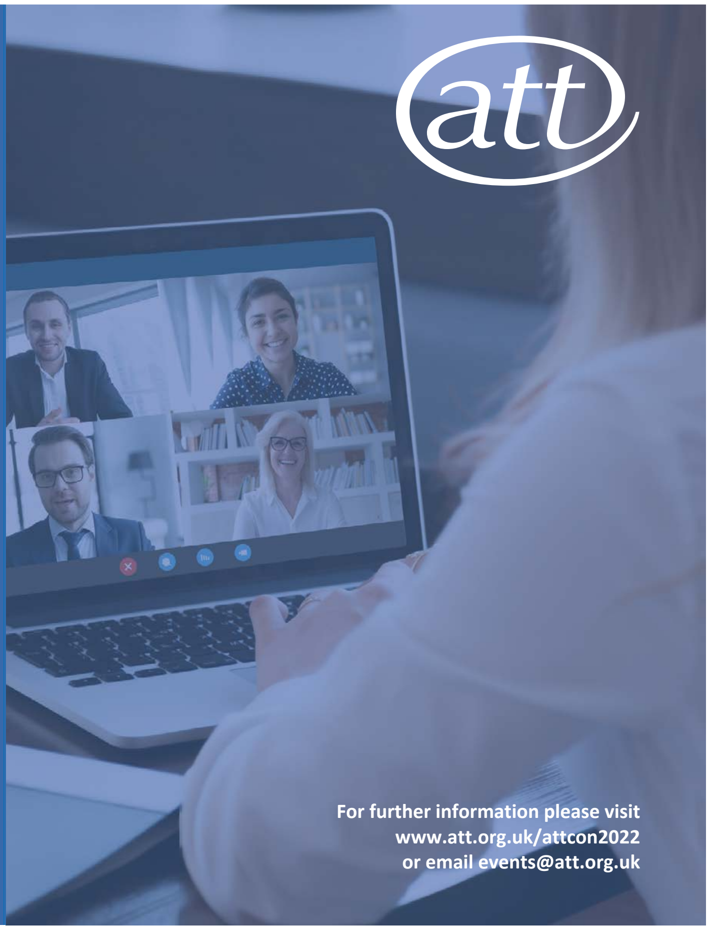
Michael Steed
MA(CANTAB) MAAT CTA (Fellow) ATT (Fellow)
Head of Tax at BPP Professional Development

Supported by our Technical Officers:
Emma Rawson
Will Silsby
Helen Thornley

Conference pricing:

ATT and/or CIOT members and students: £185
The above reduced rate also applies to AAT, ACCA, ICAS, CIMA and Accounting Technician Ireland members and/or students

Non Members: £255



For further information please visit www.att.org.uk/attcon2022 or email events@att.org.uk

Tax Rate Cards 2022

Chartered Institute of Taxation.

ATT and CIOT Members can apply for up to 50 Tax Rate Cards online before Sunday 13 February 2022.

The new Tax Rate Cards will be distributed later in February once all orders have been received.

To obtain your helpful and handy promotional cards, which set out the October Budget Tax Rates commencing April 2022 log in using your member number and password at this link.

https://pilot-portal.tax.org.uk/Account/My-profile/Edit-tax-card

2022 Tax Rate Cards

The deadline to receive your order is Wednesday 13 February 2022

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Key Points

What is the issue?
Tax advisers will often be asked to look at property issues and they will need to be confident in their knowledge.

What does it mean for me?
This is a fascinating but practical area of tax, with lots of rules, that is constantly in demand from clients.

What can I take away?
That legislation is the key and a good grip on the law is essential to give good advice.

Commercial letting

Investing, not nesting

The income tax issues involved when individuals buy property with a view to commercial letting.

by Michael Steed

This is a the first of a two part back to basics article on property matters for individuals. It does not specifically cover property matters for corporates, although some of the issues are the same. This first article will look at income tax issues and the second will concentrate on the capital tax aspects of investing in property.

Some individuals will buy property as a commercial venture and some will buy as a place to live (nesting rather than investing). Here, we are predominantly concerned with property as a commercial venture and we will be looking mainly at investments in residential property.

The income tax aspects

When an individual buys property with a view to commercial letting, the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 2005) distinguishes between two portfolios:

- a UK property business (s 264); and
- an overseas property business (s 265).

IN PRACTICE: NEGATIVE OFFSET RULES

Emily, a UK tax resident, has a loss in her one UK residential buy-to-let and a profit in her one Spanish residential buy-to-let.

The loss from her UK buy-to-let cannot offset her Spanish profit and can only be carried forward. Emily cannot use it to reduce her general income. The Spanish profit will be subject to Spanish tax; and this will be available as a credit against her UK tax liability under the UK/Spanish double tax treaty, or will be given unilaterally by HMRC where no treaty relief is possible.

It's also important to note that when we are talking about property portfolios, the negative offset rules also affect furnished holiday lets. (These are discussed in a bit more detail on the next page.) In some parts of the tax landscape, furnished holiday lets have better tax outcomes and are treated as a quasi-trade; however, the key point here is that they are still a property business and fall under these rules (as furnished holiday lets can be both in the UK and the European Economic Area).

They are both taxed on a tax year basis. There are some important outcomes from this distinction. I have picked two of these.

1. The territorial scope in s 269

a) Profits of a UK property business are chargeable to UK tax, whether the business is carried on by a UK resident or a non-UK resident.

b) Profits of an overseas property business are chargeable to UK tax, only if the business is carried on by a UK resident.

This obviously makes it essential to know your client's residence status in a particular year.

2. Offsetting of property tax losses

The principal issue here is that the two portfolios ('boxes') do not intermix when it comes to offsetting income tax losses. A loss from one 'box' cannot be carried across and used to offset a profit in the other box. This is a two-way rule.

Broadly, property tax losses from either or both of the boxes can only be carried forward against future profits from the same box (Income Tax Act 2007 s 117)), although there are some limited exceptions to this. Common to losses in both boxes is that they cannot be relieved against general income.

Trading losses

So far we've been talking about the offset of property losses. It's also worth putting this into context in respect of the offset of trading losses.

If a person sustains a trading loss, there is no general impediment to offsetting these losses against other income, which can include property income in the current tax year of the loss and/or the previous tax year (Income Tax Act 2007 s 64). Note too, that the Finance Act 2021 provisions temporarily extend the trading loss carry back provisions to two further years, subject to the provisions in Finance Act 2021 Sch 2.

The clear conclusion is that property losses are treated much more harshly than trading losses.

> **The clear conclusion is that property losses are treated much more harshly than trading losses.**

The income tax rules

The basic income tax rules for taxing property business profits are in ITTOIA 2005. Property accounts must be prepared under GAAP and in the same way as trading profits, unless this is trumped by another rule (see s 271E) – for example, the cash basis, which is required in a tax year where receipts do not exceed £150,000 unless the individual has elected back into GAAP.

Whether a client should be on the cash basis is a matter for discussion between them and their advisers. Many small landlords will use the cash basis.

In property, the tax rules generally follow the trading rules (ITTOIA 2005 s 271E), so 'wholly and exclusively' and not capital (subject to the cash basis relaxations).

For small property profits (say, out of ad hoc lettings), the £1,000 'property allowance' allows annual tax-free property income (not profits) up to £1,000 per individual owner, to be used as an alternative to the normal deductions basis; however, the normal deduction rules are not then available (s 307G). The rules on the property allowance allow for partial relief if the income is above £1,000.

Rent a room relief

This is a useful relief for owners of residential property, who rent a furnished room or rooms in their only or main residence (ITTOIA 2007 s 784). It can also be used by small-scale bed and breakfast owners.

This essentially allows for tax-free income from letting rooms to lodgers in a taxpayer's house. It is useful to think of this as a 'lodgers' relief', as it then allows us to more quickly understand how its capital tax equivalent (lettings relief) works. More of this in the next article.

The relief allows for up to £7,500 per tax year income receipts to be tax free in a taxpayer's household – either accruing to an individual owner, or halving to £3,750 for shared ownership.

If the income exceeds the allowance, then a taxpayer can choose how to be taxed – either on a normal P&L basis, or an alternative basis by which only the excess over the threshold will be taxed.

Importantly, this relief is not available for letting an annexe, or say a flat over the garage, as the let area needs to be part of the main residence. A simple litmus test of this is is whether the lodger has to use the same front door as you do.

There is a useful HMRC Helpsheet (HS 223) that provides the essential information.

Tax relief on 'dwelling related loans'

I want to turn now to a common scenario of a client who has a buy-to-let property which has been purchased with a mortgage.

IN PRACTICE: TAX FREE INCOME

Ranjit has £900 of ad hoc property income from letting his house for a weekend during Wimbledon. This is tax free under the allowance and he won't even have to declare it.

If his annual income from the letting was say £1,200, Ranjit would have to declare the income. He could either use the normal tax rules and offset actual costs to calculate his taxable profit or make a claim for partial relief under the £1,000 property allowance, by deducting £1,000 from his receipts of £1,200, instead of his actual expenses. This would be beneficial if the actual allowable expenses were less than the £1,000 allowance (ITTOIA 2005 s 783B(4)).

There is no marginal tax relief available for 'dwelling-related loans' (ITTOIA 2005 s 272A) for the 2020/21 tax year onwards. (It has been progressively diminishing since 2017/18.)

Instead, a relief broadly equivalent to basic rate relief is given by way of a tax reducer in the taxpayer's income tax computation. Your software should automatically calculate this if you have filled in the right boxes in the supplementary property pages of a tax return, but it's always worth checking.

This restriction does not apply to furnished holiday lets.

Tax relief on capital items

Landlords will purchase items such as fridges and sofas for use in their let properties, and the question then is: what tax relief are they eligible for?

Capital Allowances Act 2001 s 35 specifically disallows capital allowances in a dwelling house in either a UK or an overseas property business – unless it's a furnished holiday let (see below). So landlords will have to use the alternate replacement of domestic items relief (RDIR) in ITTOIA 2005 s 311A.

RDIR is specifically targeted at the replacement of domestic items; critically, therefore, it does not apply to the first spend – that is 'dead spend'. They must be broadly like-for-like replacements, although changes in technology are acceptable.

Note that s 35 is limited in scope to items within the house, so does not preclude capital allowances on items not in a dwelling house. This would include things like ladders, mowers and trailers used by a landlord in a property business. That's normal capital allowance territory.

> **Furnished holiday lets occupy a rather strange place in the UK tax landscape and receive rather better tax reliefs than buy-to-lets.**

Furnished holiday lets

Furnished holiday lets occupy a rather strange place in the UK tax landscape. Although they are ultimately a property business (either in the UK or the EEA), they in some ways feel like a quasi-trade and receive rather better tax reliefs than buy-to-lets.

Furnished holiday lets are eligible for capital allowances, so they don't need to rely on the RDIR rules and therefore get more immediate tax relief on qualifying expenditure. Note, however, that capital allowances may be repayable if a property loses its furnished holiday let status.

Furnished holiday let status is achieved by meeting the rules. The two most obvious are that:

- broadly in a tax year, the property is available for 210 days and is actually let for 105 days (ITTOIA 2005 s 325); and
- the property cannot be let to the same person for more than 31 days.

There are relieving provisions if a furnished holiday let is part of a property portfolio of furnished holiday lets, and also where the let meets the qualifying conditions in one year and then fails in the next two years.

Income from furnished holiday lets also qualifies for pension tax relief as it is 'relevant earnings'. This is not the case for buy-to-let income.

There is a useful HMRC Helpsheet (HS 253) that provides the essential information.

Sharing spousal and civil partner income

As advisers, we are often asked about the unequal spousal/civil partner sharing of income from a jointly held buy-to-let, perhaps to use underutilised personal allowances or basic rate bands.

The starting point (subject to certain exceptions) is that the two individuals are entitled to income in equal shares (Income Tax Act 2007 s 836). This is often not the outcome that the clients desire. So if they make a joint election under Income Tax Act 2007 s 837, then the property income will instead be taxed according to their actual unequal shares, which must reflect their beneficial interests in the property.

This is the Form 17 procedure – an HMRC download which should be posted to HMRC together with the paperwork that supports the unequal holdings. The Form 17 procedure cannot be backdated more than 60 days.

If changes are required in the property ownership to achieve this, then legal advice should be sought.

It is important to note that these two sections only apply to spousal or civil partner relationships. They do not apply to other property ownership arrangements, such as a parent and child or life partners not in a formal marriage/civil partnership.

In these circumstances, the share of property profits and losses will usually be based on the actual share of ownership.

Conclusion

As ever, as tax advisers, we need to be aware of the whole landscape and to be able to use our peripheral vision to solve problems. Property tax like other areas, is multi-faceted.

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Process problems

Jumping through hoops

by Bill Dodwell

Dealing with HMRC and the real life impact of tax can be challenging and frustrating for those who do not share our level of expertise. It is time to make tax more accessible.

Key Points

What is the issue?
Everyone working in tax policy needs to gain a much better understanding of its real-life impacts.

What does it mean for me?
A self-employed person may not have a sufficiently recent payslip or P60 to verify their identity. We should ask if the process of registering for a government gateway account can be simplified.

What can I take away?
We need to remove barriers to make it easy for taxpayers to comply, rather than coming up with too many obstacles.

Children add a great deal to any parent's life – but this isn't an article about parenting! It's about how children help anyone working in tax policy to gain a much better understanding of real-life impacts.

One of my daughters is a chef, and you can imagine that the pandemic has not been easy for many in the hospitality sector. The result was that she became self-employed – and therefore needed to notify HMRC and file a tax return.

The trials of registration

This should be easy – but the point of this article is to explain that it's not. The first problem is that registration requires a government gateway account.

A quick search on 'register for tax' takes you to a page on www.gov.uk entitled 'HMRC services: sign in or register' (see bit.ly/3ADspD6). This specifies that an individual needs to register if they:

- want a personal tax account;
- are an individual who needs to send a Self Assessment tax return (for example, to report rental, investment or self-employment income); or
- have set up a limited company, or other organisation that needs to pay corporation tax.

The landing page doesn't include a link to actual registration. Instead, there are at least four pages to read through before getting to the actual registration – and no doubt more if the intending taxpayer makes a wrong choice along the way. The key trick is to spot the link to something you don't know you have – your 'business tax account'.

Eventually, you arrive here, where the idea of creating sign-in details is given very little prominence.

Sign in using Government Gateway

Government Gateway user ID

This could be up to 12 characters.

Password

Sign in

Create sign in details

A tangle of words

There's no simple paragraph which says that an individual will need to register for a government gateway account if they don't have one and then register for Self Assessment, whereupon HMRC will open a business tax account.

The language – Self Assessment, for example – isn't designed to help chefs understand that this is the process for telling HMRC how much they've earned and paying income tax and national insurance. It only makes sense if you understand that since Victorian times the taxpayer made a return of income and the Inspector of Taxes then assessed the tax liability.

That position changed just before the millennium when (in theory) the tax authority required the individual to calculate their own tax, as well as supplying the information. In fact, of course, the Inland Revenue offered to do the calculations and today anyone using the HMRC website will find the calculations performed for them, whether they like it or not. Given there are many more chefs than tax specialists, perhaps our language should appeal to the larger group?

Further barriers

Moving on, registering for a government gateway account turns out to be very easy. The problem starts if you actually want to

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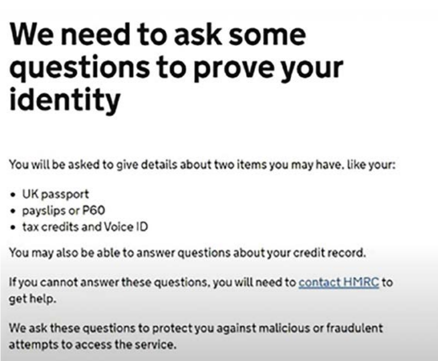
use it, when it is understandably necessary for the individual's identity to go through verification.



We need to ask some questions to prove your identity

You will be asked to give details about two items you may have, like your:

- UK passport
- payslips or P60
- tax credits and Voice ID

You may also be able to answer questions about your credit record.

If you cannot answer these questions, you will need to contact HMRC to get help.

We ask these questions to protect you against malicious or fraudulent attempts to access the service.

A self-employed person may not have a sufficiently recent payslip or P60 – or even any at all. The P60 is for the last tax year (a P45 won't do) and the payslip is not more than three months old. The credit record doesn't sound like something a chef would have – and unfortunately HMRC does nothing to explain. In fact, most of us have some form of credit record if we have a bank account.

> **We need to remove barriers to make it easy for taxpayers to comply, rather than coming up with too many obstacles.**

The chef of my acquaintance was convinced that she did not have a credit record and thus spent several weeks visiting the Post Office to register in person, using the In Branch Verification Service. This did let her into her HMRC account so that she could register for Self Assessment – and receive a letter with her UTR (unique tax reference) and a code a couple of weeks later. When the letter is received, the individual needs to log on again and enter the code in the letter – and finally they are allowed to tell HMRC about their income and pay the necessary tax.

When we were able to meet up, I was actually able to help the chef complete the government gateway identity check. The credit questions revolved around a time period when a bank account, credit card, phone contract or loan might have been taken out – by reference to less than a year; one to three years; three to five years; over five years; or not at all. It also required selecting a previous address from a list. Importantly, not having something was an acceptable answer. The value of the government gateway is that, unlike Verify, it is required by commercial software to file returns.

Should we not ask whether this could be simplified? Why does an individual need to register for Self Assessment, wait for a code and then enter it on the HMRC website? Does the code really serve any purpose? Could HMRC add some more identity sources to the government gateway process, such as a UK driving licence or council tax reference?

There's a similarly annoying process for paying inheritance tax. You have to fill in a simple form (see bit.ly/3G0K0WD) which just asks for the deceased's name, NI number, dates of birth and death, and whether probate will be sought. If you do this online, the HMRC system immediately sends you a reference number by email – but that's not the one you need to pay inheritance tax. Instead, you need to wait for an entirely different number to arrive in the post, three weeks later.

Isn't it time that HMRC asked chefs to help it write its tax pages? Even though the pages I've mentioned seem to be written in a general style, they are actually full of tax jargon and take too long to get to the point. We need to remove barriers to make it easy for taxpayers to comply, rather than coming up with too many obstacles. Fintech banks also have to manage an identity process, but they have learned how to do it in a much more user-friendly way. Our tax system needs to benefit from their example.

R&D rules
Making R&D fit for purpose

by William Sweeney

The R&D rules are set to see significant changes, with further categories of qualifying expenditure. But is all as it seems?

The Autumn Budget 2021 saw significant changes to the R&D rules, with the inclusion of further categories of qualifying expenditure corresponding to modern working practices, offset by a refocusing of the R&D rules on innovation in the UK. There were also long overdue measures to tackle abuse.

The Budget announcements were short on detail, however. Big questions remain over what a focus on innovation in the UK could mean for multinational businesses or organisations sourcing skilled labour from across the world.

The government has since issued its R&D Tax Reliefs Report (see bit.ly/3ny4saU), which sets out further details of these proposals, as well as details of further consultation required for their implementation by April 2023. With R&D reliefs playing an increasingly important role in the promotion of research and development within UK companies, how can you ensure that your clients are maximising their claims?

All legislation references in the following article refer to Corporation Tax Act 2009 unless stated.

Modernisation of R&D?

The scope of qualifying expenditure for both the SME Scheme (Part 13) and

Key Points

What is the issue?
The Autumn Budget announced big changes in the R&D expenditure that companies will be able to claim, with a welcome expansion in data and cloud computing costs offset by a restriction in offshore costs.

What does it mean for me?
Big questions remain over what a focus on innovation in the UK could mean for multinational businesses or organisations sourcing skilled labour from across the world.

What can I take away?
Advisers should note that the R&D landscape is likely to see some significant changes in the next year and they will need to start working with clients to plan for this.

R&D Expenditure Credit (RDEC) Scheme (Part 3) has long included the costs of computer software, to the extent that it is employed directly in relevant R&D. This includes the costs of systems used both for the purposes of directly resolving technological uncertainties, and software used for qualifying indirect activities, such as routine administrative or HR work related to the R&D staff.

HMRC regards software as the digital code or instructions that tell a programme how to achieve a task. This definition does not include the costs of servers, data storage or hosting, which HMRC has always regarded as more akin to a digital rental cost than of software.

The increasing adoption of cloud-based Software as a Service (SaaS) has created uncertainty amongst both companies and HMRC's own officers regarding whether SaaS costs can be claimed. Other businesses have noted that while SaaS itself clearly meets the definition of software, it is often bundled with other cloud services such as hosting and storage, which clearly do not qualify for relief. This presents distinct problems for apportionment as many invoices don't separate the various components of overall cost. This can lead companies to exclude significant R&D costs, rather than incur the time and expense necessary to quantify the qualifying spend.

The announcement that qualifying expenditure will be expanded to include data and cloud computing costs to better incentivise modern R&D methods came as welcome news to many companies and advisers. However, for many the proposals will be a little disappointing as they still contain the same carve-outs as before.

It was announced that qualifying expenditure will be expanded to include the following costs.

Cloud computing and software costs used directly for R&D

This would include costs which can be attributed to computation, data processing, analytics and software, but as previously would exclude costs commonly included within a cloud computing package, such as hosting and data storage. This appears to be little more than a reaffirmation of the status quo.

Licence payments for datasets used directly for R&D in a qualifying R&D project

Datasets are regarded as an essential input for companies undertaking R&D based on or utilising the latest computational analysis techniques.

The aim is for R&D relief to only be available for licence costs incurred solely for R&D and not for costs that can be

reimbursed, or that will be a lasting asset to the company and are analogous to the existing rules for consumable or transformable materials. A licence will not qualify if it grants:

- any rights of resale over the data;
- any rights to publish, share or otherwise communicate the raw data within the dataset to a third party; and
- any ongoing rights of use, beyond the expected term of the R&D project.

Staffing

The report also clarifies that any staffing costs incurred in collecting, cleansing and analysing data would already have qualified, provided the data is collected to resolve a project's scientific or technological uncertainty.

Focus on innovation in the UK

The UK's current R&D rules are unusual in that, under both schemes, companies can claim relief for the costs of R&D activity that is undertaken outside the UK. This offers a number of benefits, including making the UK highly attractive as the focus for a group's R&D activity, especially when combined with the UK's skilled technical workforce and favourable IP regime.

However, the government has become increasingly concerned that the costs to the exchequer are outweighed by the benefits to the UK economy, with the business investment resulting from investment far lower than other comparable nations. The recent review considered how to ensure the R&D reliefs are effectively targeted to drive a greater level of UK R&D activity. The

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report therefore proposes a significant restructuring of the UK rules. In future:

- Companies will be only be able to claim relief for the costs of any R&D activity subcontracted to a third party where the subcontractor carries out the R&D activity in the UK. A similar principle will apply for the RDEC scheme where a company claims for and contributions it makes to independent R&D of a qualifying body (s 104L).
- Under both schemes, companies will only be able to claim relief for expenditure on externally provided workers (s 1127) where the workers are paid through a UK payroll.

This will apply to both unconnected supplier costs, and connected party costs (broadly, relevant R&D expenditure recharged from related parties, such as group companies). The changes will not impact any other categories of qualifying expenditure; therefore, overseas staff, as well as software or consumables sourced overseas, would be unaffected.

While the motivations for this change are clear, many firms will suffer, including UK based firms that are unable to source the skills they need locally, or multinational groups that share skills across the group. Interestingly, the government has promised to consult on whether there is a case for any narrow exceptions for some overseas activity, and so practitioners and industry professionals should review their R&D activities in anticipation of this.

Groups that subcontract elements of their R&D to other jurisdictions for commercial reasons will also be caught by the new changes. This will not be covered by an exemption and so planning will need to be undertaken to compare these benefits against the UK tax relief foregone.

Managing R&D risk

Meanwhile, the ever-increasing number of spurious R&D claims has prompted the government to further tighten the R&D regulations. Recent years have seen a steady tightening of the R&D compliance regime, most recently with the introduction of last year's CT600L supplementary pages for R&D claims and the addition of the PAYE cap on the R&D tax credit to counter artificial arrangements for overseas firms to benefit from UK R&D relief.

We have also seen further HMRC resources to check R&D tax relief compliance, and a number of recent cases ruled in favour of HMRC show its hardening stance and a willingness to challenge R&D claims. However, the report acknowledges that additional resources alone are not sufficient to manage the scale of the problem. Without more data to select the high-risk cases, there is also the risk they are a blunt instrument, that risks discouraging companies making genuine claims.

The government therefore intends to make the following changes:

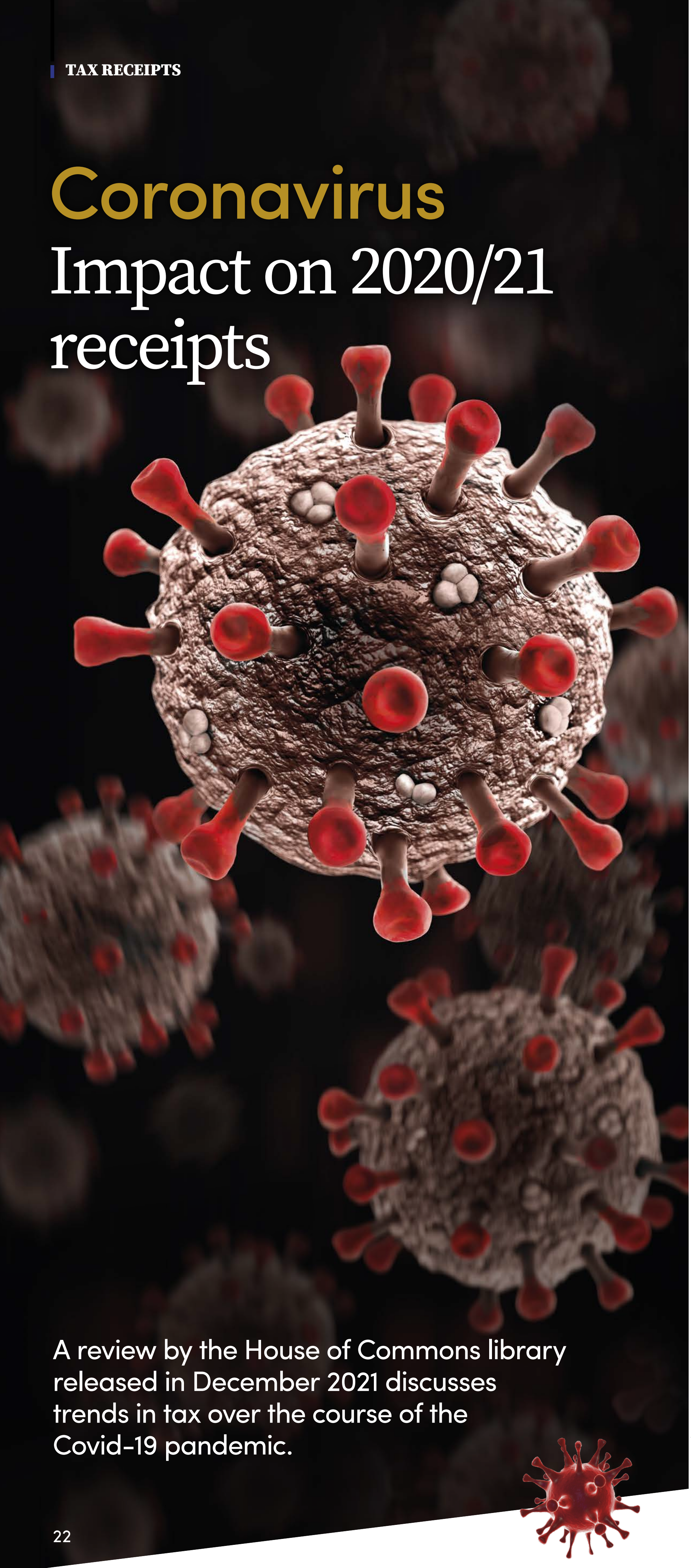
1. All R&D claims must be made digitally and must provide more detail of the claim. Specifics are yet to be determined, but examples include: what expenditure the claim covers; the nature of the advance sought; the field of science or technology; and the uncertainties overcome.
2. Claims must include details of any agent who has advised on preparing the claim.
3. Claims must be endorsed by a named senior officer of the company.
4. Companies must inform HMRC in advance that they plan to make a claim.

For the majority of R&D advisers and the companies they advise, these points should not prove a significant challenge. The additional details suggested are set out under HMRC's existing guidance for the submission of an R&D claim and will already be provided by the majority of reputable R&D advisers. The hope is, however, that the additional disclosures will ensure companies take greater responsibility for claims, and allow HMRC to identify those less ethical advisors.

Summary

The government's review of the R&D regime is not complete, and further consultations are planned to inform the exact shape the measures above will take. Hopefully, this will see further relaxation of the rules surrounding cloud computing, although this remains doubtful. The report also notes that further areas are being considered for reform as part of the ongoing review and all measures will inform the draft legislation for the summer of 2022 to take effect from April 2023.

In the meantime, advisers should note that the R&D landscape is likely to see some significant changes in the next year and they will need to start working with clients to plan for this. This comprises major changes to the structure of the reliefs, both for how R&D claims are considered and justified going forward and for how the costs themselves are calculated, with potential significant financial implications for clients.



Coronavirus
Impact on 2020/21 receipts

A review by the House of Commons library released in December 2021 discusses trends in tax over the course of the Covid-19 pandemic.

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The coronavirus pandemic meant that 2020/21 was not a typical year in most aspects of life, including tax. In 2020/21, UK government revenues – or public sector current receipts – were £793 billion, 4.3% lower than in 2019/20. Taxes amounted to £706 billion.

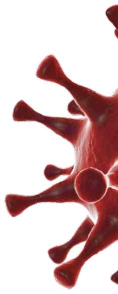
Income tax, NICs and VAT contribute a little under three-fifths of all revenues. In 2020/21, £196 billion was raised from income tax, £144 billion from NICs and £117 billion from VAT. Corporation tax was the fourth largest tax, raising £54 billion. Council tax raised around £38 billion and fuel duty raised £21 billion. All other individual taxes each raised less than £20 billion in 2020/21.

Business rates would normally raise over £25 billion but the government gave a business rates holiday to sectors affected by coronavirus-related restrictions in 2020/21.

In aggregate, receipts have fallen as there has been less economic activity and because the government has given tax breaks to support the economy. However, the economy shrank to a greater extent than receipts, so receipts became larger relative to the size of the economy in 2020/21. The financial support that the government provided to protect household incomes – such as the furlough scheme – and support businesses – such as grants – also supported some tax revenues.

What happened to taxes in 2020/21?

Government revenues usually fall during a recession and usually fall slightly faster than the size of the economy. However, during 2020/ 21, revenues fell slower than the economy which meant that revenues became larger relative to the size of the economy in 2020/21, compared with 2019/20. This is despite the government making tax cuts that reduced receipts, such as holidays for business rates and stamp duty and cuts to VAT for the hospitality sector.



Overall, revenues held up relatively well because of the financial support that the government provided to protect household incomes and support businesses. For example, for personal taxes raised from earnings and incomes, wages and salaries grew during 2020/21, despite the fall in economic output, particularly due to the support provided through the furlough scheme.

In cash terms, the hardest hit tax in 2020/21 was VAT, where receipts were over £18 billion lower, compared with 2019/20. Consumers have been less able to go out and spend during the pandemic, and government policies, such as cutting VAT from 20% to 5% for the 'hospitality, accommodation and attractions' sector, have also affected VAT receipts. VAT

2020/21 TAX RECEIPTS

Business rates, air passenger duty, stamp duties on property and fuel duty all decreased relative to the size of the economy. Air passenger duty fell by 91% as the number of people taking flights fell substantially. Travel restrictions during lockdowns also reduced motor vehicle traffic which caused fuel duties to fall.

Business rates revenues decreased primarily because of the holidays in place for the retail, hospitality and leisure sectors in England, and similar schemes in Scotland and Wales. Revenues from stamp duties on property transactions fell due to a mix of the stamp duty holiday introduced by the government and fewer transactions.

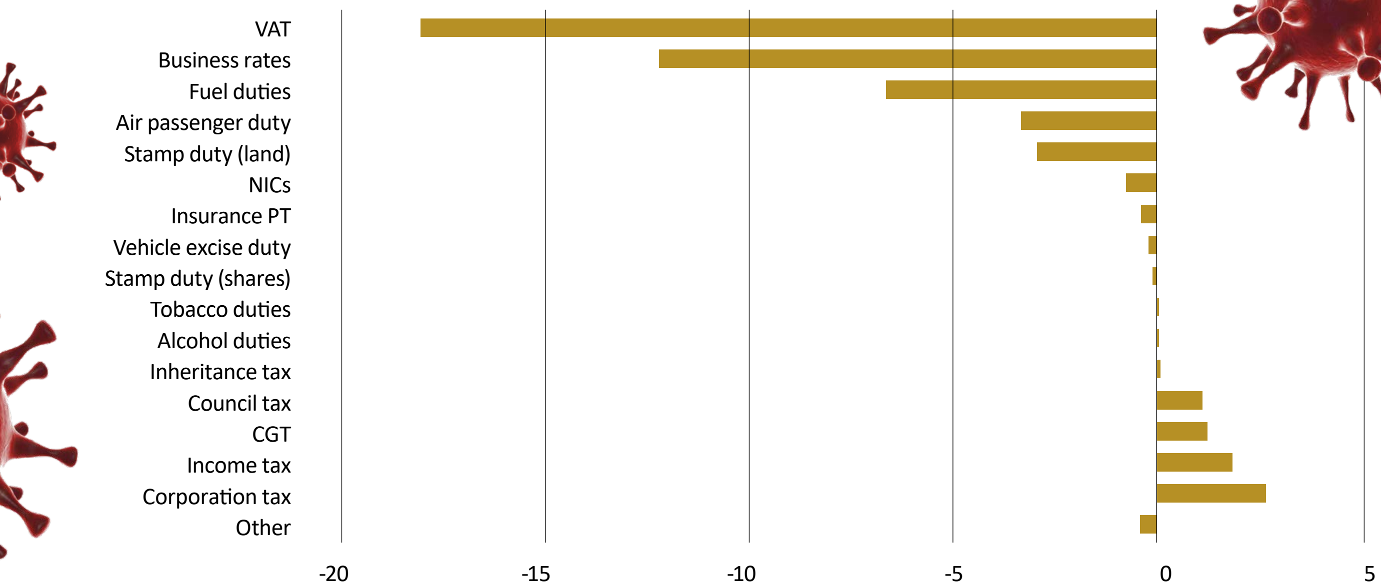
Some tax revenues grew in 2020/21, both in cash terms and relative to the size of the economy. Alcohol duties increased by 1% as higher sales in shops made up for the lost receipts from the closure of pubs and restaurants.

Capital gains tax, council tax and inheritance tax all increased by 4% or more, compared with 2019/20.

The UK's two largest sources of revenue – income tax and NICs – grew relative to the size of the economy in 2020/21. Despite the economic contraction, earnings and employment held up remarkably well in 2020/21, supported by the furlough scheme for employees and the grants for many of the self-employed.

CHANGE IN RECEIPTS

2019/20-2020/21, £ billion



revenues were equivalent to 6.0% of GDP in 2019/20 and 5.5% in 2020/21.

Impact of taxes on household income

The Office for National Statistics (ONS) reports on the effects of taxes and benefits on UK household income. Their analysis considers the impact of direct and indirect taxes. There are about 27.8 million households in the UK (see bit.ly/348o52q), of which 7.9 million are a single person; 9.7 million two people; and 10.2 million three or more people (in all cases adults and children).

Direct taxes

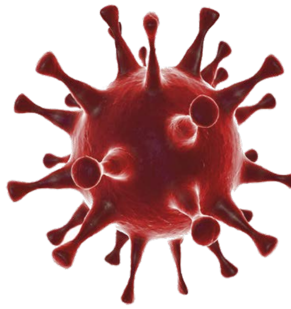
In 2019/20, the average household paid £14,100 in direct taxes, equivalent to 23% of gross income. Gross income includes all original income – for example, from earnings and investments – plus cash benefits provided by government – for example from the state pension.

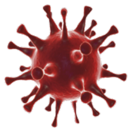
The richest fifth (about 5.6 million households) paid on average £40,900 in direct taxes in 2018/19, which is equivalent to 30% of gross household income. The poorest fifth paid £3,300 in direct taxes, which is equivalent to 17% of gross household income.

Council tax limits the extent to which direct taxes reduce income inequality. Even after including council tax support claimed, the poorest fifth pay a greater proportion of their gross income on council tax than the richest fifth. Research suggests that this is partly due to low take-up of council tax support entitlements.

Indirect taxes

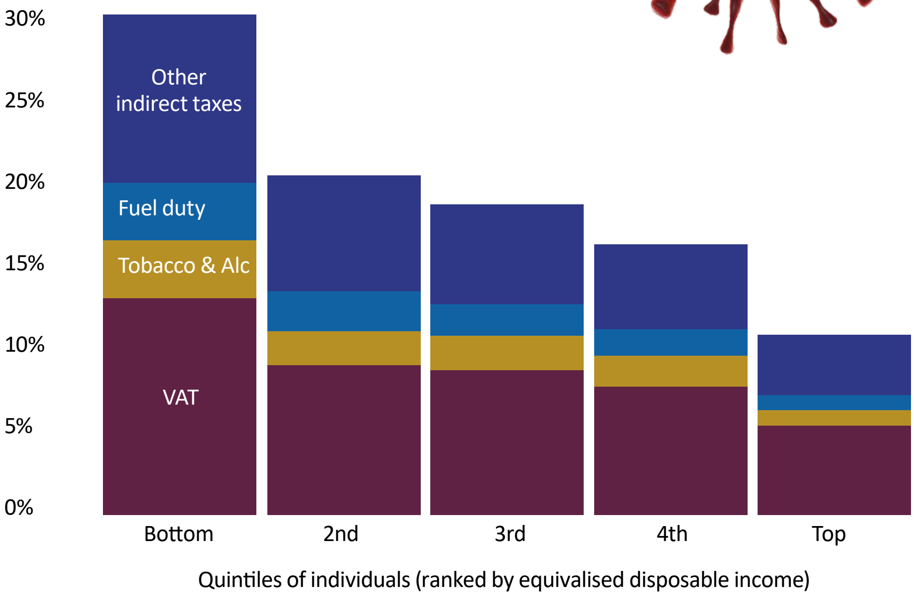
When measured relative to household incomes, indirect taxes (around 45% of which are VAT) can be judged to be regressive: that is, those with lower





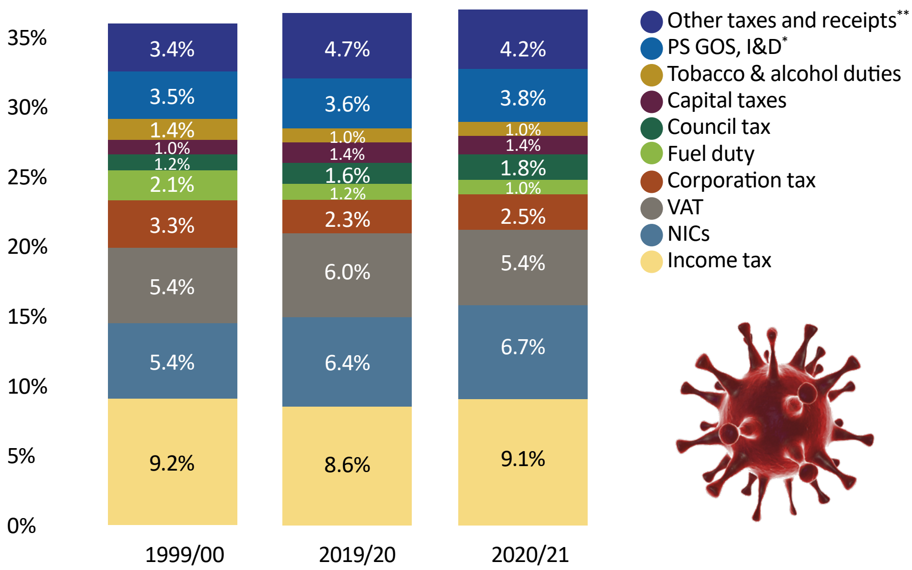
INDIRECT TAXES

% of disposable household income, 2019/20



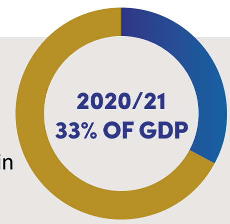
PUBLIC SECTOR RECEIPTS

% GPD



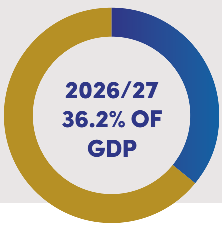
* Public sector gross operating surplus and public sector interest and dividends
** Includes business rates receipts

FORECAST FOR TAX RECEIPTS



The Office for Budget Responsibility forecast that taxes and social contributions will rise from 33% of GDP in 2020/21 to 36.2% of GDP in 2026/27, which would be the highest level since the early 1950s. Public sector current receipts are forecast to rise to 40% of GDP, which would be the highest level since the early 1980s.

The OBR say that the rise in receipts is a result of stronger and more tax-rich forecast growth, coupled with tax rises announced in two budgets during 2021. The main rate of corporation tax will increase in April 2023, the income tax personal allowance and higher rate threshold have been frozen and NICs rates will increase in April 2022.



incomes pay more relative to their income. However, when measured relative to household expenditure, indirect taxes are more evenly distributed across individuals.

Changes in composition of taxes over the last decade

Comparable data on public sector receipts are available from 1999/00. In 1999/00, public sector receipts were equivalent to 36.0% of GDP. Receipts have fluctuated since, but the general trend has been towards receipts growing relative to the size of the economy. In 2019/20, public sector receipts were equivalent to 36.7% of GDP. Receipts have exceeded 36.5% of GDP in each year since 2010/11.

Both VAT and NICs were larger in 2019/20 than they were in 1999/00, relative to the size of the economy. Income tax and corporation tax receipts were relatively smaller than they were in 1999/00.

Since 1999/00, noticeable relative decreases have been seen in fuel duty receipts – a result of improved fuel efficiency and freezes in fuel duty rates – and in tobacco duties.

Council tax has grown in significance since 1999/00. Receipts grew particularly quickly in the years leading up to 2009/10 but have since slowed.

The taxes grouped in the Public Sector Receipts chart on the left as 'capital taxes' have grown from 1.1% of GDP in 1999/00 to 1.4% in 2019/20. Receipts for stamp duty on property transactions and capital gains tax have grown faster than the economy over the period. The growth seen in the taxes grouped as 'other taxes' has largely come from the introduction of environmental levies and growth in receipts from both air passenger duty and insurance premium tax. Other new taxes introduced since 1999/00 include, the bank levy, the bank surcharge, the apprenticeship levy, diverted profits tax and the digital services tax.

The richest one-fifth paid £10,800 in indirect taxes in 2019/20; the poorest fifth paid £4,800. For the poorest fifth this is equivalent to 30% of disposable household income, but for the richest fifth it is equivalent to 11% of disposable household income.

The Institute for Fiscal Studies has analysed how much households pay in tax. Their analysis – which covers around three quarters of tax revenues (including income tax, NICs, VAT, excise duties and council tax) – found that the 50% of households with the largest incomes contribute around 78% of taxes.

The House of Commons Library 'Tax statistics: an overview' (published in December 2021) is available at bit.ly/3KMXDMu

Normal expenditure out of income

Secure gift giving

Key Points

What is the issue?
The normal expenditure from income exemption provides a valuable exemption from inheritance tax. Where available, gifts made are immediately outside the donor's estate.

What does it mean for me?
'Normal expenditure' means what it is usual for the transferor to spend, rather than some arbitrary judgment as to what is normal. This means that there is no limit on the exemption, provided the transferor has sufficient income.

What can I take away?
Care should be taken to determine the extent to which gifts an individual wishes to make may be within the scope of the exemption, and adequate records should be maintained.

by Michelle Robinson

The normal expenditure out of income exemption provides a valuable exemption from inheritance tax, provided certain conditions are met and the correct records are maintained.

The normal expenditure from income exemption provides a valuable exemption from inheritance tax. Where available, gifts made are immediately outside the donor's estate. There is no upper limit on the value to which the exemption can apply, provided the requisite conditions are met. The exemption can apply to lifetime gifts made to either individuals or trustees.

The exemption

The exemption, which is in Inheritance Tax Act 1984 s 21, is available:

> 'if, or to the extent that, **it is shown**:
> a) that it was made as part of the **normal expenditure** of the transferor; and
> b) that (taking one year with another) it was **made out of his income**; and
> c) that, after allowing for all transfers of value forming part of his normal expenditure, the transferor was left with sufficient income to maintain his **usual standard of living**...'
> [Emphasis added].

This article will consider points (a) to (c) in turn, before commenting on factors to consider, exclusions from the exemption and the record keeping required to 'show' that the exemption should apply.

Normal expenditure

'Normal expenditure' means what it is usual for the transferor to spend, rather than some arbitrary judgment as to what is normal. This means that there is no limit on the exemption, provided the transferor has sufficient income (see below).

'Normal' is not defined in the statute and so this term takes its natural meaning. HMRC's Inheritance Tax Manual at IHTM14241 summarises the dictionary definition of 'normal' as including 'standard, regular, typical, habitual or usual'.

There is no legislated minimum number of gifts or period over which gifts must be made.

On the latter point, HMRC's manual, at IHTM14242, advises HMRC officers that it would be reasonable to consider a time span of three to four years to determine whether there is a regular pattern of gifts. The manual adds that a longer period can be considered if this helps the taxpayer to demonstrate that gifts were part of a normal pattern.

A single gift may qualify as normal expenditure if it is intended to be the first gift in a pattern of gifts.

This point was considered in *Bennett and Others v IRC* [1995] STC 54. This case is referenced in IHTM14244 where HMRC

summarises Lightman J's approach as meaning that, in brief, normal expenditure can be considered in one of two ways:

1. by examining the transferor's expenditure over time; for example, giving 10% of income to charity or family members each year; and
2. the individual being shown to have assumed a commitment, or adopted a firm resolution, regarding their future expenditure with which they have then complied.

The transferor recording their intention at the outset of arrangements can assist with point 2. This is particularly true if the gift is a single gift, in which context HMRC comments that taxpayers or agents must provide strong evidence that the gift is 'genuinely intended to be the first in a pattern and that there was a realistic expectation that further payments would be made'.

Made out of income

The 'income' which can be used to make gifts is the income the individual has received after taxes and expenses. Income is income for accountancy purposes, which may not match income for tax purposes.

One point which often arises in practice is 5% withdrawals of premiums invested into non-qualifying insurance policies: these withdrawals are typically returns of capital and so should not be included when calculating the income available to make gifts.

Income should be taken 'one year with another'. This means that the statute does allow room for an individual's income level to fluctuate, such that a gift may exceed income in the year of gift but still qualify for exemption once income from another year(s) is considered. This can be a grey area, as income does not retain its status as income indefinitely: it will at some point become capital.

There is no bright line test to determine when accumulated income becomes capital. HMRC's view is that income becomes capital after two years unless there is evidence to the contrary (IHTM14250). HMRC considers that evidence to the contrary may include immediately investing the income in a capital product or conversely retaining the income as income for longer than two years with a specific purpose in mind.

There is no statutory basis for the two-year rule of thumb that HMRC applies. In *McDowall and others (executors of McDowall, deceased) v CIR and related appeal* [2004] STC (SCD) 22, it was found that the exemption could, in principle, apply to gifts that were made from income that was accumulated for three years before the gifts were made.

Each case will be considered on its own merits. Factors to be taken into account include the amount of time the income has been held before being gifted, the method of accumulation (e.g. retention in a current account or investment) and the transferor's actions.

Usual standard of living

The transferor must be able to maintain their usual standard of living after making gifts. The exemption will be unavailable if the transferor draws on capital in order to maintain their lifestyle.

This condition is closely linked to the above considered 'made out of income' condition, since both conditions require consideration of the extent to which a donor has income available to them, albeit in this context the point is whether the donor's usual expenses can be paid out of the income remaining after gifts have been made. The usual standard of living to be considered is what is usual for the transferor when the transfer is made. This means that the exemption may remain available if a transferor's lifestyle changes following a gift due to a sudden drop in income, such as on redundancy.

HMRC's approach is that commitments made before a change in circumstances may continue to qualify (e.g. continuing to pay insurance premiums which must now be paid from capital due to reduced income), though the exemption will not apply where the income reduction could be foreseen (IHTM14255).

HMRC officers are advised to use their judgment if there is a permanent change in an individual's income or expenditure and consider the availability of the exemption on a case-by-case basis (IHTM14250).

Relevant factors

HMRC's manual at IHTM14243 comments that HMRC officers must consider all relevant factors when determining the availability of the exemption, including the factors commented on below.

Frequency

HMRC comments that normal does not necessarily mean regular or annual, though regular giving is more likely to meet the normality test. HMRC's manual suggests that averaging the yearly amount of the transferor's gifts of a particular type will help when considering this point.

Amount

HMRC considers that gifts should be comparable in size, though does allow for variation in some instances, such as where the funds required varies (e.g. school fees payable fluctuate over time) or where gifts are made from an income source which varies in size (e.g. company dividends). It is possible for a gift to be partially exempt (e.g. due to limited income), in which case the excess amount of the gift would not qualify for the exemption.

Nature

Gifts are generally expected to be gifts of money, since gifts must be out of income for the exemption to apply. Exceptionally capital assets may qualify for the exemption if the asset was purchased using income specifically to give to the donee (e.g. purchasing a car).

Gift recipients

Gifts do not always need to be made to the same person: gifts to persons within a category to which regular gifts are made may be exempt; e.g. gifts totalling £10,000 could be given to grandchildren each year with the amount given to each individual grandchild varying each year.

Motives

The reasons for making gifts and surrounding circumstances can indicate whether a gift falls within a pattern of habitual giving. A transferor may make regular gifts to a particular group of people but not every gift within that category may be eligible for exemption. For example, a large one-off gift to a child to set-up a business is different from regular Christmas gifts to children.

Exclusions

Some transfers are ineligible for the exemption, including:

- transfers made on death;
- transfers on the termination of a qualifying interest in possession settlement;
- deemed potentially exempt transfers, such as when a gift with reservation ceases to be subject to a reservation;
- apportionments made to individuals under the close company apportionment rules in Inheritance Tax Act 1984 s 94; and
- gifts of capital assets unless, exceptionally, income was used to fund the gift (see above).

Furthermore, payment of certain insurance premiums related to an annuity on the life of the transferor will not be regarded as normal expenditure from income, and receipt of certain purchased life annuities on the life of the transferor will not be taken into account as income (see Inheritance Tax Act 1984 s 21(2)-(4)).

Record keeping

Records of income, spending patterns and gifts made should be maintained. This evidence may need to be provided to HMRC in respect of both otherwise chargeable lifetime transfers and/or gifts made in the seven years preceding death.

Form IHT403 contains a detailed schedule which HMRC refers to as a guide for determining a person's income and expenditure. It is sensible to maintain records in line with HMRC's schedule.

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Additionally, if gifts are made from accumulated income, evidence of the intention to make gifts therefrom should be maintained, since HMRC's manuals advise that HMRC will only accept that the exemption applies to such gifts if supporting evidence of the surrounding circumstances is available (IHTM14251).

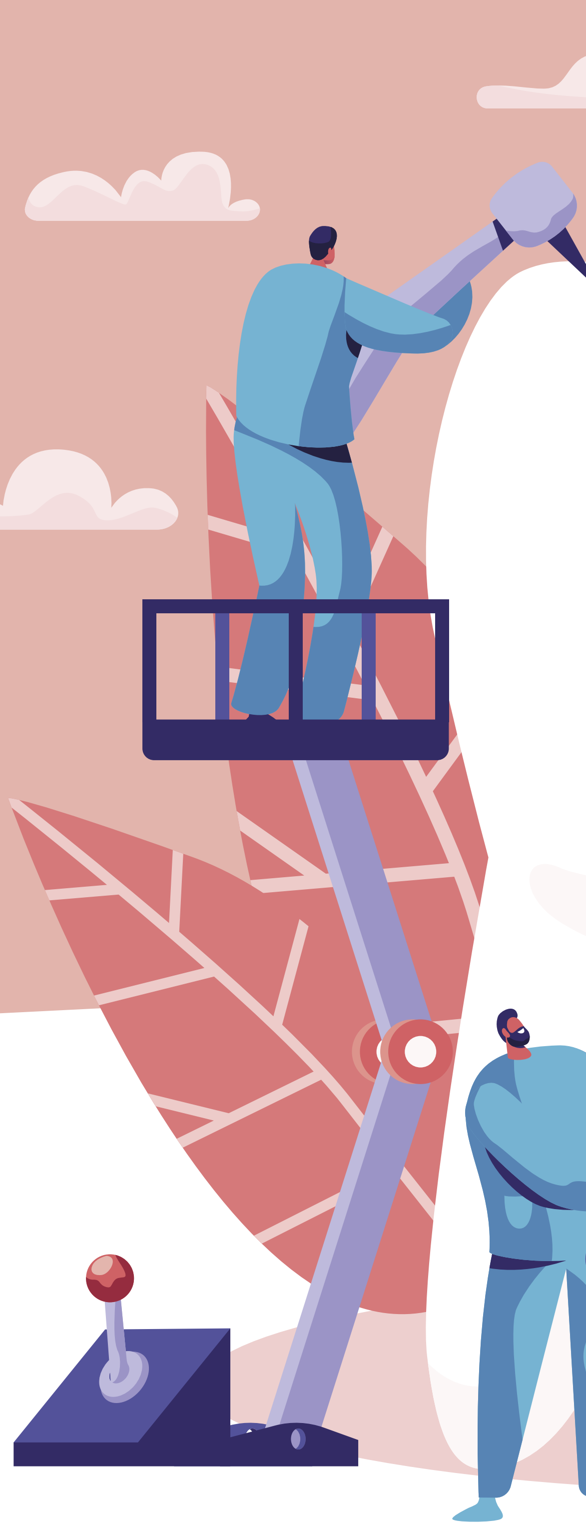
Finally, as noted above, it is prudent to record the transferor's intention to make regular gifts out of income.

Conclusion

The normal expenditure out of income exemption provides a valuable exemption from inheritance tax. Care should be taken to determine the extent to which gifts an individual wishes to make may be within the scope of the exemption, and adequate records should be maintained.

Accommodation expenses
The tooth will out

by Keith Gordon



The FTT's decision in a case looking at a dentist's accommodation expenses exposes the complexities of deductibility of expenses for employees.

Key Points

What is the issue?
A Southampton dental surgeon claimed a tax deduction for accommodation expenses incurred to avoid unmanageable commutes for employment purposes at a London hospital. HMRC considered that the expenses were not deductible and charged a penalty for carelessly claiming such a deduction.

What does it mean for me?
By using the self-employment test in the Income Tax (Trading and Other Income) Act 2005, the First-tier Tribunal considered that an apportionment should be permitted so as to allow some of the expenditure to be allowed. It recognised that this will be only a 'small proportion'. The appeal against the penalty was allowed in full.

What can I take away?
HMRC might decide that the case represents an unhelpful precedent and therefore feel obliged to take the case to the Upper Tribunal. Similar claims for accommodation expenses may be hotly resisted by HMRC.

It is well known that the deductibility of expenses for employees is much tougher than for the self-employed. For the latter category, the principal statutory requirement is that the expenses are incurred 'wholly and exclusively' for the purposes of the business (Income Tax (Trading and Other Income) Act 2005 s 34). For employees, the equivalent statutory provision requires both that the employee is obliged to incur the expenses as holder of the employment and also that the amount claimed is 'incurred wholly, exclusively and necessarily in the performance of the duties of the employment'.

The underlying policy rationale for the stricter regime is clear: employees ought, generally, to be provided by their employers with all the facilities to allow them to carry out their duties and therefore there should be little reason for additional expenditure to be laid out by the employees beyond that incurred by the employer.

The restricted rules will naturally lead to some harsh results in some cases. The recent case of *Kunjur v HMRC* [2021] UKFTT 362 (TC) illustrates the point.

The facts of the case

Mr Kunjur was an experienced dental surgeon who was undertaking further training as a maxillofacial surgeon. To undertake this training, Mr Kunjur took the only available position, which was at a hospital in South London, with occasional duties at another hospital in the same area. His family (wife and children) was based in Southampton: Mrs Kunjur was a teacher there and the children were established in local schools.

The training contract was for four years. In the first week of his employment, Mr Kunjur tried to commute from the family home, but it quickly became apparent that this was not a viable option because of the long hours involved, the fact that Mr Kunjur was becoming exhausted and the risk of a consequential breach of Mr Kunjur's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professional obligations to his patients. Furthermore, Mr Kunjur was obliged to be on call for two nights a week (not necessarily the same two nights each week) and for one weekend in six. Whilst on call, Mr Kunjur had to be within 30 minutes of the hospital.

As a result, Mr Kunjur took some modest accommodation relatively close to the hospital, where he stayed during the working week and during those weekends on call. Otherwise, he drove back to Southampton each Friday where he remained until the Sunday, ahead of the start of his working week at 7.30am on Monday. Mr Kunjur did not invite his family to visit him at this accommodation, nor did they ever come uninvited.

It appears that Mr Kunjur might have been entitled to stay at the residential accommodation at the hospital itself (generally available to the medical and nursing students). There was also the possibility that Mr Kunjur could take hotel accommodation for the nights to be spent in London. However, Mr Kunjur ruled out both possibilities because, as a mature adult he felt that the former was inappropriate and with the other constraints on his time (including his study obligations) constantly moving hotel rooms was not an attractive proposition.

With the assistance of his accountants, Mr Kunjur submitted tax returns, claiming a deduction in relation to the accommodation expenses incurred.

HMRC considered that the expenses were not deductible and, furthermore, charged Mr Kunjur a penalty for carelessly claiming such a deduction. Mr Kunjur appealed against both decisions and the case proceeded to the First-tier Tribunal.

The First-tier Tribunal's decision

The case came before Judge Heather Gething who sat with Tribunal Member Michael Bell.

In the course of the submissions on his behalf, Mr Kunjur made the point that his professional duties required him to be close to the hospital when he was on-call. Indeed, whenever he was at the accommodation, he was informally on-call at all times. Furthermore, he used the premises to undertake his compulsory evening study and when taking calls from the hospital as the need arose, which happened on most evenings.

> **HMRC identified a number of cases where claims by employees for their expenses had been rejected.**

HMRC argued that none of the limbs within s 336 was met and identified a number of cases where claims by employees for their expenditure had been rejected. In relation to the penalty, HMRC considered that the fact that Mr Kunjur had engaged an accountant was insufficient: the penalty rules require the taxpayer to have taken reasonable care to avoid the error, notwithstanding the use of an agent.

The tribunal worked its way through the various parts of the statutory tests.

The tribunal considered that Mr Kunjur's contractual obligations meant he was required to have accommodation in South London whilst on-call, thereby satisfying the first part of the statutory test, being that 'the employee is obliged to incur and pay it as holder of the employment'.

The tribunal does not appear to have considered the 'necessarily' part of the test, but perhaps it considered that this overlapped with the previous point.

However, it proceeded to consider the other two parts of the second limb. In relation to the 'wholly and exclusively'

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requirement, the tribunal noted that Mr Kunjur derived no wider private benefit of the accommodation, in the sense that it was not somewhere where he entertained members of his family. Nevertheless, the tribunal noted that Mr Kunjur undertook his private study at the accommodation. Although this was a mandatory part of his employment, there was no obligation for it to be carried out at any particular geographical location.

On the subject of the 'in the performance of the duties part of the test', the tribunal concluded that Mr Kunjur could be said to be performing the duties whilst actually taking a call from the hospital. Similarly, even though it seems to have failed the 'wholly and exclusively' aspect of the test, the tribunal considered that the mandatory private study was itself carried out in the performance of the duties.

Furthermore, by using the self-employment test in the Income Tax (Trading and Other Income) Act 2005 as an analogy, the tribunal considered that an apportionment should be permitted, so as to allow some of the expenditure.

In short, the tribunal felt that some of the expenditure should be allowed and directed the parties to piece together the various components of the decision so as to work out how much should be allowed. As the tribunal recognised, it will be only a 'small proportion'.

The tribunal then proceeded to consider Mr Kunjur's appeal against the penalty. The tribunal said that the rules were counterintuitive and particularly difficult. Furthermore, Mr Kunjur was fully entitled to rely upon his advisers. Thus, Mr Kunjur's appeal against the penalty was allowed in full.

Commentary

Given the constraints of the statutory test in s 336, the tribunal has clearly endeavoured to find a solution that is as fair as the legislation will permit. However, it is my view that this is an example of where fairness and the actual statutory position do not necessarily coincide. Indeed, I fear that HMRC was right to deny the deduction for the accommodation expenditure as neither limb of the statutory test appears to be met.

First, I do not believe that Mr Kunjur could be said to have been 'obliged to incur and pay [the accommodation costs] as holder of the employment'. As the Court of Appeal had said in *Brown v Bullock (HM Inspector of Taxes)* (1961) 40 TC 1: 'The test is not whether the employer imposes the expense but whether the duties do, in the sense that, irrespective of what the employer may prescribe, the duties cannot be performed without incurring the particular outlay.' (*Brown v Bullock* was not one of the cases relied upon by HMRC, but this quotation did feature in some of the later cases referred to by HMRC in its submissions.)

Secondly, the absence of any discussion as to the 'necessarily' part of the test means that the toughest part of the statutory rule has seemingly been sidestepped.

It is my view that similar claims will be (and should be) hotly resisted by HMRC and I would urge caution before relying on this case.

Thirdly, it is my understanding that the apportionment that often takes place in relation to the expenditure of the self-employed is (at least in part) based on a statutory rule found within ITTOIA 2005 s 34(2) and not directly applicable to cases within Income Tax (Earnings and Pensions) Act 2003.

Fourthly, I do not think that the expenditure can be said to have been incurred in the performance of Mr Kunjur's duties. Instead, it is my view that it represents no more than expenditure incurred as a matter of practicality so as to permit Mr Kunjur to carry out his training and other duties.

Without wishing to criticise Mr Kunjur's decisions, an employee living on the Isle of Skye (for example) but who takes a job in Hastings is not going to be entitled to a deduction for accommodation costs on the South coast, simply because practicality requires her to live closer to the place of employment.

It remains to be seen whether HMRC and Mr Kunjur will manage to reach a resolution in accordance with the tribunal's directions. I suspect that even the tribunal's decision will not afford a particularly significant deduction to Mr Kunjur. Nevertheless, HMRC might decide that the case represents an unhelpful precedent and therefore feel obliged to take the case to the Upper Tribunal. Given my preceding comments, I think that Mr Kunjur would be well advised to try to avoid any exposure to HMRC's legal costs if at all possible.

However, I very much hope that HMRC will not seek to challenge the tribunal's decision on the penalty. This is a clear case where a taxpayer has relied upon professional advice which was not obviously wrong, and there is plenty of case law which establishes that that is enough to avoid any risk of a penalty.

HMRC had argued that, notwithstanding the fact that Mr Kunjur had engaged professional advice, he was nevertheless expected to check his tax return against HMRC's guidance. Such an approach is unrealistic (as well as not being justified by the statutory test). Indeed, HMRC's argument has the flavour of trying to fit the facts to the desired conclusion that a penalty should be paid. There is no sign that Mr Kunjur went through the internal review process, so it might be possible that the penalty decision had been seen by only two officers (the original officer who issued the penalty and the officers carrying out the litigation). However, penalty cases in circumstances such as this should simply not get anywhere near the tribunal.

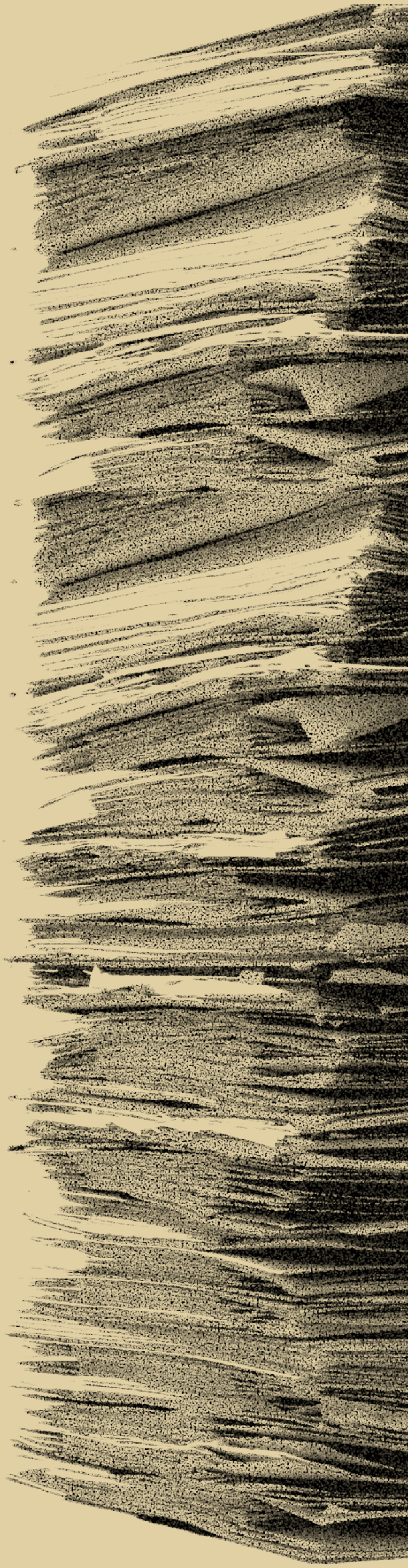
This is not an isolated case and I believe that the professional and other representative bodies should make urgent representations to HMRC so as to curtail this apparent zeal to charge penalties when penalties are clearly not payable.

What to do next

Although the tribunal's decision appears to open the door to employees claiming accommodation expenses, it is my view that similar claims will be (and should be) hotly resisted by HMRC. Accordingly, I would urge caution before relying upon this case.

If, in the gap between this case being published and the date of publication of this article, expense claims have been included in 2021 tax returns, I would strongly suggest that the expense claim be carefully considered. At the very least, it might be worth paying the tax at stake (so as to cap any interest charges) and writing to HMRC explaining the extent to which the *Kunjur* case has been relied upon.

Proposals for tax simplification The Treasury's response



by John Bunker and Helen Clarke

The Treasury's formal response on 30 November to OTS's reports on inheritance tax and capital gains tax will result in limited tax changes. What is being changed and what major changes have been avoided?

No major changes to inheritance tax and capital gains tax will be flowing from the Office of Tax Simplification (OTS) reports, after the Treasury's formal response on 30 November. What is being changed and what major changes have been avoided? We are taking stock of all this and what it may mean for clients.

There were four reports by the OTS in all, two on inheritance tax (November 2018 and July 2019) and two on capital gains tax (November 2020 and May 2021), all requested by Chancellors, which require an official response. That came with the announcement on Tax Administration and Maintenance Day, 30 November 2021, from the Financial Secretary to the Treasury (FST), Lucy Frazer QC.

In the end, there is one big process change for inheritance tax. Five technical proposals have been accepted for capital gains tax, but only two have a lot of substance in them. There was also some agreement on some good points made, for further consideration. Whether these *will* be further considered, we must wait to see.

The OTS reports were a mix of some sensible recommendations for technical changes to improve elements of tax that don't work well, especially with the separation and divorce rules, and some fairly radical policy changes that seemed to go rather beyond mere 'simplification'. So what are the main proposals that have not been accepted?

The good news: the major changes that are not being made!

For now at least, no major changes to inheritance tax or capital gains tax proposed by OTS are being implemented by the Treasury/HMRC. This became apparent when the chancellor made no announcements of capital tax changes in the Autumn Budget on 27 October 2021. If any tax increases were to be made, this seemed the moment, when the country was emerging from the ravages of Covid-19 lockdown and ahead of the next election. So, the Treasury announcement confirms this more formally.

The following capital tax areas, suggested by the OTS for reform, are not being changed for now.

Increasing capital gains tax rates to bring them more in line with income tax

After great speculation about increasing capital gains tax rates ahead of the Spring Budget 2021, the chancellor froze allowances for five years; however, the rates have been left at a maximum of 20% (or 28% on residential property) compared with a top 45% rate on income tax. So, it is sensible for clients to continue taking capital gains, using the annual exempt amounts (£12,300 each) where they can, in addition to any tax free gains through ISAs. Some tax planning, such as for gifts that actually trigger some capital gains, may also be worth considering further.

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Normal expenditure out of income exemption

This remains intact, and is not being restricted, so it's really worth making the most of this very generous exemption by getting the details right. Two key steps to securing the relief are the written commitment to go on making the payments and the records to show there is surplus income to meet the gifts. Ideally, clients complete the IHT403 form year by year to show their income and expenditure, and that vital surplus.

CGT uplift on death

The OTS included proposals in three of its four reports (the second on inheritance tax and both capital gains tax reports) to cut back what it called a 'double benefit' – where an estate pays both no capital gains tax on death (as there is an 'uplift' to probate values) and no inheritance tax where there is either a full business or farm relief (business property relief or agricultural property relief) or a spouse exemption. So there is no change for now, which may mean that some business or farm owners will continue to put off making gifts to family working hard in the enterprise (see below).

Hybrid businesses: the 'trading threshold' for 100% business property relief

The proposal that this should be increased to 80%, from at least 50%, was not taken up. This is helpful for businesses which have a significant 'investment' element; e.g. with properties let out giving a good rental income, alongside their trading income. These hybrid businesses must satisfy a test that has four elements looked at 'in the round' – capital value, income, turnover and management time – to see if it can be considered mainly a trading business. If it can, you can secure 100% relief, even though only just over half trading, which can be seen as generous. This is not straightforward and specialist advice is recommended on the operation of this practice.

It is important for all such hybrid businesses to 'stand back' from time to time, and look at their accounts from the longer-term perspective, to ensure they are satisfying the test; for example, that they do not have too much cash that might breach the 'excepted assets' rules. While the old cliché still rings true, that you can never have too much cash, you can for inheritance tax purposes. You need to ensure that any cash built up is serving a specific current purpose, or is there for a specific future use, and that is recorded in notes to the accounts or board minutes. This is worth reviewing on a regular basis.

Inheritance tax: major process change for deaths from 1 January 2022

The OTS proposal on inheritance tax already accepted, and indeed now brought into operation, is to simplify the process in many estates where no inheritance tax is being paid.

The HMRC target is that 90% of non tax-paying estates should not have to do an account for inheritance tax, aiming to benefit 240,000 estates a year. Taking effect for estates with deaths from 1 January 2022, the scope of 'excepted estates' not required to do a full account (IHT400) is now extended, with the simpler form of account (IHT205) being withdrawn. You will either do the full account or none.

Executors will still need to get full details of the estate, and often proper valuations, to enable them to report the gross and net values when applying for probate, but some work will be saved.

> **The target is that 90% of non tax-paying estates should not have to do an account for inheritance tax, aiming to benefit 240,000 estates a year.**

This will mainly benefit estates of first spouses to die, but records must still be kept of lifetime gifts, etc. for the second estate. One real benefit of the new rules is that a part nil-rate band can now be transferred to the surviving spouse without the need for a full IHT400, where the late spouse used part of their nil-rate band, e.g. by legacies to grandchildren. The residence nil-rate band, however, still requires a full IHT400 and IHT435 form.

Capital gains tax: extension of 'no gain, no loss' separation and divorce rules

The current capital gains tax position on separation and divorce remains difficult, with the loss of the 'no gain, no loss' relief after the year of separation. The OTS proposed to extend the 'no gain, no loss' window on separation to the later of:

- the end of the tax year at least two years after the separation event; or
- any reasonable time set for the transfer of assets in accordance with a financial agreement approved by a court or equivalent processes in Scotland.


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The good news is that the government agrees the window should be extended and will consult on the detail over the course of the next year. This is sensible, and we now need HMRC to follow through and enact change without delay to save more couples suffering unnecessarily. It is not any form of tax avoidance. Other than this, the other technical capital gains tax recommendations accepted were:

- the extension of the payment of capital gains tax on residential property to 60 days (from 30 days), which was very sensible and widely pressed for by the professional bodies; and already implemented from October 2021; and
- the expansion of the specific rollover relief rules which apply where land and buildings are acquired under compulsory purchase orders.

There were also two HMRC process issues:

- the need for improvement to guidance: HMRC has reviewed and expanded the guidance on the UK property tax return, which was published and updated on 24 January 2022 (see bit.ly/3IEJ0cv) and 'will proceed to the other areas of guidance listed in due course'; and
- the integration of the different ways of reporting and paying capital gains tax into the Single Customer Account, making it a central hub for reporting and storing capital gains tax data. HMRC will consider this as part of the delivery of the Single Customer Account, the service development of which is a long term HMRC strategy.

Business and farm owners: tax provisions discourage gifting to children

The 'double benefit' (as termed by the OTS) referred to above has a practical effect unforeseen by the original announcement that the 100% rate of agricultural property relief and business property relief (when introduced by the then Chancellor) would encourage owners of farms and businesses to pass interests on to the next generation working hard to make it work. This is one of the distortions of the capital tax system, as noted by the All Party Parliamentary Group (APPG) on Intergenerational Fairness in their report on inheritance tax in January 2020, which led them to propose a radical re-working of inheritance tax.

They proposed removing most of the exemptions and reliefs, moving to a much simpler tax with lower rates of 10% and 20%. Whether you agree with their conclusion, they produced some helpful analysis of the problems of a complex tax that often produces unfair or distorted outcomes.

One consequence of the tax discouragement to make lifetime gifts – with advisers regularly encouraging clients to hold on to asset until they die for the 'double benefit' in tax terms – is that many of the younger generation continue to work for family enterprises without either a proper remuneration for their hard work and long hours; or any guarantee of their getting proper benefit for building up the equity in the business.

In recent years, we have seen a growing number of proprietary estoppel cases, where claims are made that parents promised one child 'one day all this will be yours'! When they don't later inherit it all, but (say) have to share with siblings who have not put in the time and effort, they claim reliance on the promise to their detriment – i.e. they wouldn't have worked all those hours, for so little pay, without the assurance they would inherit.

This has happened a lot with farms, where the emotional pull of retaining the farm, with all its family history, is often great and the income return also can be limited compared with capital value. These situations are not helped by the continuance of the status quo.

Clients who haven't been adversely affected by changes to capital tax

There is, then, little change for clients, reassuringly so for those benefiting from the present capital tax regime.

The decision to disregard the Wealth Tax Commission report of December 2020, which had suggested that a 'one-off' wealth tax would be an option for funding the costs of the Covid-19 crisis, is also a relief.

Lucy Frazer's Parliamentary written answer on 16 November 2021 pointedly says the Commission was nothing to do with government and said: 'The government is committed to a fair tax system in which those with the most contribute the most. The UK already taxes assets and wealth across many different economic activities, including the acquisition, holding, transfer and disposal of assets, and income derived from assets.'

The major tax rise of 2021, the health and social care levy, due to take effect in April 2022, leaves many older clients, including many 'baby boomers', doing relatively well. The 1.25% is primarily paid by the working population, by both employer and employee, though it will also apply to dividends. Those retired with a decent pension income, and/or property rental income, will pay nothing extra from this income towards health and social care. Many retired clients will also benefit from the status quo that applies to capital and wealth taxation generally.

Many of those who might have anticipated a higher tax burden are therefore now in a position to help their children or grandchildren who are having to meet the higher tax burdens this April, along with the cost of living rises (especially of energy). Now is a great time for clients to review what they have, what they need, and what they could share by gifts in effective lifetime planning.

There is an opportunity for many to help correct the relative generational imbalance between those who have retired after years of tax breaks on pensions and homes, which gives substantial secure capital, and those who have not really had time to build up that capital and are still working hard to meet increasing costs and build up their savings.

John Bunker, then chair of the CIOT Private Client (UK) Committee, led a CIOT team giving evidence in meetings with the OTS on all four OTS reports, which all fell in his three and a half years as chair.

Career development

Job applications
New year, new resolution

How do you decide whether it is time to move on in your career – and if you do, how do you make the perfect application?

by Georgiana Head

Key Points

What is the issue?
Have a think about whether you really want to leave your current employer. Is it the role that is no longer right or the firm?

What does it mean for me?
If it is time for a change, do some basic planning. Write down what you like about your current role and would like to retain. Add in what you want from a new role. What you are willing to give for this?

What can I take away?
If you have a job spec for a role, tailor your CV to it emphasising the elements of your current work which matches the requirements of the role.

Working from home across various lockdowns has given us the rare opportunity to pause and think about our lives and our careers, and to reflect on what we want out of life. Many of us had to isolate yet again during the Christmas holidays, as another round of Covid-19 swept across our families. Many of us are thinking about our future. This has all prompted a huge worldwide movement of employees described as 'The Great Resignation'.

The New Year is the classic time for resolutions but many of us in tax don't get the time to reflect until after year-ends and busy seasons are finished. I always feel that 1 February is like a mini New Year in tax, almost more than 5 April. (Though HMRC's decision to waive late filing and late payment penalties for a month may mean we have to wait until 1 March for the respite this year!)

If you are thinking about approaching the employment market, here are some top tips.

If it ain't broke, don't fix it

Have a think about whether you really want to leave your current employer. Is it the role that is no longer right or the firm? Can you ask for an internal secondment? A pay rise or more flexibility in your working hours? Can you change department or investigate a promotion?

Don't be embarrassed to ask. If you go to the external market and get a job offer, your current employer is likely to be keen to persuade you to stay and may well be open to a change in your current role. If your employer has to go to the external market, it will cost them money to replace you.

If you are considering a move because you want to move location – for example, moving to the countryside or to be closer to family – see whether your current firm can enable this. Can your role become remote worked?

The influence of Covid-19

Let us not forget that we are living in very strange times, and battling a plague which has forced huge changes to British society. Suddenly, catching a train or bus, going to a supermarket or meeting a client has become a very different experience – one fraught with worry and new routines, masks, handwashing and social distancing.

We can't do the things that normally give us some release from working at our desks, such as client lunches, foreign holidays, work drinks and celebrating successes such as promotions, births and weddings. Even meeting a friend for a chat at the watercooler has been curtailed for many of us.

In the background is a constant level of worry about whether we or family members will catch Covid-19. Layer on top the need to juggle childcare around 'bursting bubbles' and lockdowns. Even our everyday language has been transformed by this strange disease – think lockdown, Zoom calls, Teams meetings and PPE.

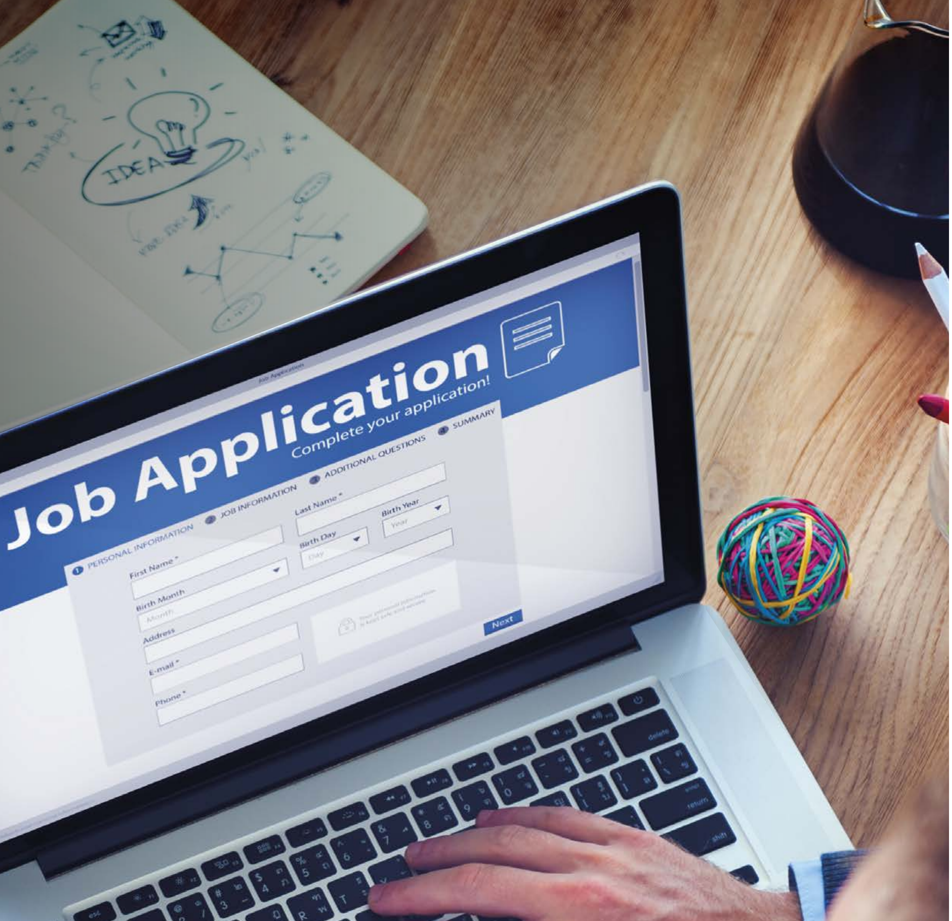
If you have actually had Covid-19, you may also be struggling with your mood. A research study by Oxford University showed that one in three people who have Covid-19 struggle with depression, mood disorders or more serious psychological disorders in the six months after infection (see bit.ly/33JbvWZ). More recent studies show that Covid-19 may be more of a brain related ailment than a respiratory one, as first thought. So be kind to yourself, and have a think about whether your feelings of unhappiness are really work related or are actually linked to living through a very stressful global event.

> **Your CV is a bit like your intellectual property. It should be valued and shared sparingly.**

First steps

If you do decide that it is really time for a change, do some basic planning. Write down what you like about your current role and would like to retain and then add in what you want from a new role, such as location, study support, promotion, type of work, etc. Think about what you are willing to give for this. So will you relocate? Would you take a pay cut for a change in direction? Would you be happy to increase your hours? If, for example, you are considering a move from practice to industry, would you consider working more days in the office? It's useful to have this framework to help you decide on job offers when you receive them and to help you talk fluently when interviewing.

Once you have a framework for the sort of role you want, start doing some research. Think about the accountancy firms, law firms and in-house teams in your region. Have a look online at LinkedIn and get an idea of what roles are out there.



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PROMOTE YOUR QUALIFICATIONS

The Portal

Make sure that you have copies of your educational qualifications and your professional qualifications available. Double check on the ATT and CIOT websites that you are listed under the 'Find a member' sections of their websites: pilot-portal.tax.org.uk/utilities/att/find-a-member and pilot-portal.tax.org.uk/utilities/ciot/find-a-member

Make sure that your CV is clear about when you took your exams and when you became a qualified ATT or CTA. Always include details of any prizes and distinctions, etc. I would also add in a line about 'all first time passes' if you did pass your exams at first attempt!

A note of caution: don't apply for lots of roles through lots of different people. I recently put my details on an online portal to find a science tutor for my 15 year old son. Fast forward a week, and my inbox and voicemail are full of enquiries from tutors in the UK and beyond. I have completely lost track of who I have talked to and who I have discounted.

I'd advise against putting your CV on a generalist job board or CV portal, as that is the quickest way to lose track of your CV and who has access to it. Instead, talk to an experienced recruitment consultant. Get them to map the market for you and tell you what opportunities are available. Or if you see a role online, apply to that but keep a note of who is advertising it (the employer or a recruiter).

Before you give your CV to any consultant, friend or external party, ask them not to share it with anyone without your permission. Take control of the process to ensure that they agree every approach to the market with you. Your CV is a bit like your intellectual property. It should be valued and shared sparingly. If a consultant is going to change your CV into their format, make sure you have reviewed it before it goes out. You wouldn't expect to send out a client's tax return without them checking it over first.

If you don't have a CV, ask a recruitment consultant for a blank template or work with them to

> **If you do decide that it is really time for a change, do some basic planning.**

In her next article, Georgiana Head will share some tips on interviewing skills, and how to land your dream job.

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create one. Make sure that your LinkedIn profile and CV align (so dates are right on both, for example). The first stage in any employer's recruitment process is often to review CVs and check them against the online information available on the applicant.

The perfect formula for a winning CV

Your CV needs to sell your experience. Whatever your area of tax and whether you work in industry or practice, the same key things need to be covered.

- **Qualifications:** Include your education and professional qualifications: GCSEs, O Levels, Highers, A levels, degrees, postgraduate qualifications and all professional qualifications. Many employers won't accept a CV if it doesn't include details of GCSEs and A levels. One of my favourite bits of large firm intel is that your grade at GSCE maths is a better predictor of success in accountancy exams than your degree classification!
- **Experience:** A profile paragraph summarising your career to date is fine, but don't fall into the trap of listing endless skills or competencies. Structure your CV as sections of each employment and include details of what you did in each role. Your technical experience should be the largest chunk of each section, but also include any management and staff development experience, as well as experience of business development and marketing – or for in-house people, of broader influencing and commercial decision making. As a more junior candidate, your CV will be more weighted towards the technical, and the day to day drafting of compliance or advice. As a senior manager, your day may be split pretty evenly between, technical work, team management and client management/business development.
- **Technology:** I'd include a short section on IT systems experience, such as use of Xero, Sage Excel, PowerPoint SAP, etc.
- **Other:** I would always include a short section on your hobbies and interests outside of work. This is the bit that makes you sound most human. Don't just use what you included on your graduate CV from 10 years ago, though – do you really still play rugby?

If you have a job spec for a role, tailor your CV to it, emphasising the elements of your current work which match the requirements of the role. That is what recruitment consultants spends large chunk of their time doing – matching CVs to roles. Getting a job spec is a key part of the recruitment process as it can also help you to map what questions are likely to arise in an interview. But more of that in the next instalment of my tips for finding your dream job...

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Multiple trusts

Is two better than one?

Multiple trusts were commonly used to reduce inheritance tax by minimising ten year and exit charges. We ask whether they are still worthwhile.

by Emma Chamberlain

Key Points

What is the issue?
Prior to 9 December 2014, a common device to minimise inheritance tax charges was the use of 'pilot' or multiple trusts. This did not avoid the entry charge but could minimise future ten year and exit charges.

What does it mean for me?
Following amendments, when calculating the rate of tax charged under the relevant property regime, the value of non-relevant property in the same or a related settlement is now excluded. This probably benefits some larger trusts and wealthier taxpayers.

What can I take away?
Given that there are still many trusts around that were set up and funded with same day additions before December 2014, it is sensible to avoid additions to such trusts by the settlor now.

EXAMPLE 1: TWO PILOT TRUSTS

Jane establishes two pilot trusts (Trust 1 and Trust 2) on 1 and 2 October 2013 with £100 each. (They were often established on different days to avoid being related settlements but strictly this was not necessary if each pilot trust only initially held £10.) On 1 January 2014, she adds £150,000 to each. She had made no previous chargeable transfers other than, in the case of Trust 2, the £100 transferred to Trust 1 would need to be taken into account if she had already used her annual exemption. The fact that she makes a chargeable transfer (£150,000 to the 'other' trust) on the day of the addition is irrelevant. Each trust can benefit from a full nil rate band when calculating the exit and ten year charges.

If Jane had added £150,000 to Trust 1 on 1 December and £150,000 to Trust 2 on 2 December 2014, Trust 1 would still benefit from a full inheritance tax nil rate band; however, the tax charge on Trust 2 would take account of the £150,000 transfer to Trust 1. (In effect, therefore, the nil rate band for Trust 2 would be reduced from £325,000 to £175,000. This would only matter if the settled property in Trust 2 increased in value significantly by the ten year anniversary.)

The same technique was often used in wills.

EXAMPLE 2: NIL RATE BANDS

Cliff, with an unused inheritance tax nil rate band, set up two pilot trusts on 1 December 2003. On his death on 5 November 2012, he left £325,000 to each of the trusts (as well as establishing a further discretionary trust in his will) with the residue passing to his civil partner.

It was important to check what chargeable transfers Cliff had made in the seven years before his death (i.e. from 5 November 2005). If, for instance, he had made a deathbed gift of £500,000 to his niece, that figure will be included in taxing the pilot trusts: the trusts would then have no inheritance tax nil rate band.

If Cliff had not used his nil rate band at death, the pilot trusts each benefit from a full nil rate band; and the discretionary trust created by his will would also benefit from a full nil rate band. This is because Cliff set up no related settlements in his will and other chargeable transfers on the same day (to the two pilot trusts) were ignored. Hence, pilot trusts were very useful to set up before death! Going forward, when calculating the rate of ten year anniversary and exit charges, each trust will have the benefit of a full nil rate band and, provided the trusts remain protected (see below), this continues. Practitioners should be aware of this when calculating relevant property charges.

One effect of the inheritance tax changes to trusts in Finance Act 2006 was that trusts within the 'relevant property regime' became much more common. Almost all property settled into trust in a donor's lifetime is now relevant property unless the beneficiary is disabled. Whether the trust is discretionary or interest in possession is irrelevant.

Once in the relevant property regime, the trust is subject to inheritance tax charges of up to 6% every ten years and exit charges on trust distributions of capital. In addition, assets placed in trust which exceed the donor's unused nil rate band are subject to a 20% entry charge on the excess value unless qualifying for an exemption such as business property relief.

The position before 9 December 2014

In the light of this, people sought to minimise the ten year and exit charges under the relevant property regime. Prior to 9 December 2014, a common device was the use of 'pilot' or multiple trusts. This did not avoid the entry charge but older readers will recall that it could minimise future ten year and exit charges. Following the changes in Finance (No 2) Act 2015, this was stopped; however, the use of multiple trusts can still prove advantageous for a number of tax and commercial reasons. In addition, practitioners need to understand the old regime and the changes in order to avoid 'tainting' protected pilot trusts set up before December 2014.

Before 10 December 2014, properties added by the settlor to several *existing* settlements on the same day avoided aggregation with each other, so that each settlement effectively had its own nil rate band when calculating the rate of tax on the ten year anniversary and on distributions, provided that the settlor had not used up their nil rate band on previous chargeable transfers.

The savings were limited to a maximum of 6% of £325,000 multiplied by the number of trusts used and were therefore less significant for very high value property but could be useful for lesser sums.

EXAMPLE 3: THE WINNER

Elliot died in April 2015 and his will established:
1. a trust for his grandchildren;
2. life interest trusts for each of his three children which are qualifying interests in possession being immediate post death interests; and
3. a life interest trust of residue for his surviving civil partner Jake.

Trust (1) creates a relevant property settlement; trusts (2) and (3) establish immediate post-death interests.

Trusts (1) and (2) are related settlements. Prior to 18 November 2015, the value of the property *when settled* in the trusts at (2) would have been included in calculating the rate of tax later applicable to the relevant property settlement in (1). For chargeable events from November 2015 (which in this case will be April 2025 or the date of any earlier capital distribution, the property in (2) is ignored. The trust in (3) falls within Inheritance Tax Act 1984 s 80 and so is treated as arising on Jake's death (or on the earlier termination of his interest). It is not a related settlement.

This change was a genuine simplification as it meant that trustees did not need to keep records of the value of non-relevant property when it was first settled.

EXAMPLE 4: THE LOSER

James wants to leave £900,000 for his children at the age of 50. If a single trust were set up in James' will, it would suffer ten yearly and exit charges because the value of the relevant property exceeds the inheritance tax nil rate band. A similar result would occur if three separate trusts – one for each child – were employed in the will as a result of the related settlement rules; however, note here that only the value of the related property in Trusts 2 and 3 at the date of death of James would be included in the ten year anniversary when calculating the charge on Trust 1 (and vice versa), so there is still some advantage in having separate trusts even if all funded on the same day.

However, contrast the position if:
1. James, who had made no previous chargeable transfers, set up three pilot trusts each with £10 on different days during his lifetime for his children; and
2. in his will made before 10 December 2014 he put £300,000 into each of those trusts.

The inheritance tax position is as follows:
a) James made a chargeable transfer on his death of £900,000. (Note that the tax due on his death is not reduced by the use of pilot trusts.)
b) If James died before 6 April 2017, each settlement will benefit from a full inheritance tax nil rate band. (In effect, therefore, James has set up three nil rate band discretionary trusts for the purpose of future charges under the relevant property regime.)
c) If he died on or after 6 April 2017, the settlements are not protected and share a single nil rate band. The hypothetical chargeable transfer used in the future tax rate calculations for each settlement will include: the relevant property in the settlement itself, plus the £300,000 same-day additions to the other two settlements, plus the value of the other two trusts when they commenced (but not any subsequent growth in value of those two settlements – so in a sense they are treated like related property trusts).

How did it work?

Typically, a number of pilot trusts would be established on different days, each with a nominal sum of say £10. Substantial assets were then subsequently added to each trust. It was essential that all such later additions occurred on the *same day*.

The reason lay in the inheritance tax relevant property charging rules at Inheritance Tax Act 1984 Part III Chapter III. This provided that in calculating the tax rate, where the settlor had added property to the settlement after it commenced, instead of taking into consideration the chargeable transfers of the settlor in the seven years before he created the settlement, his total chargeable transfers in the seven years before the addition were substituted if these were greater (Inheritance Tax Act 1984 s 67(3). However, the key point was that transfers on the same day as the addition were ignored.

Often the trusts had the same trustees, beneficiaries and trust powers but they would nevertheless be separate settlements for inheritance tax and trust law purposes. In *Rysaffe Trustee Co (CI) Ltd v IRC* [2003] EWCA Civ 536, HMRC failed in its attempt to tax five identical settlements as a single composite settlement under Inheritance Tax Act 1984 s 64. Mr Justice Park held in the High Court that 'it is up to the settlor who places property in trust to determine whether he wishes to create one trust or several trusts, or for that matter merely to add more property to a settlement which had already been created in the past'. Each settlement was created by a separate 'disposition' within Inheritance Tax Act 1984 s 43. The claim that there was one settlement by associated operations was rejected by the Court of Appeal.

Anyone seeking to circumvent the same day additions provisions might well be caught by GAAR.

There were traps to watch: the technique could not be done by settling property into separate discretionary trusts set up in the will itself or varying the will. The trusts would all commence on death and be related trusts. There were also complications if the deceased had used up the nil rate band or left property on interest in possession trusts for the spouse or civil partner. But remember that the tax savings overall are limited to 6% of the nil rate bands multiplied by the number of trusts.

For GAAR purposes, although pilot trusts are clearly tax arrangements and involve contrived steps, HMRC accepted in the guidance that they were not to be challenged under the GAAR provisions even if done on or after 17 July 2013 because they accorded with established practice accepted by HMRC:

> 'The practice was litigated in the case of *Rysaffe Trustee v IRC*. HMRC lost the case and having chosen not to change the legislation, must be taken to have accepted the practice.'

Of course, that guidance was issued in 2013 before the 2014 changes discussed below. Anyone seeking to circumvent the same day additions provisions now might well be caught by GAAR.

The position from 10 December 2014

After three consultations between 2012 and 2014 aimed at simplifying the taxation of relevant property trusts, draft clauses were published in December 2014. These clauses (with significant revisions) became law in Finance (No.2) Act 2015 on

18 November 2015 but with anti-forestalling provisions from 10 December 2014. This consultation rather demonstrates the difficulty of reforming trusts in any meaningful way – the changes brought winners and losers!

The winners

From 18 November 2015, when calculating the rate of tax charged under the relevant property regime, the value of non-relevant property in the same or a related settlement is now excluded. Curiously, this probably benefits some larger trusts and wealthier taxpayers rather than those who were looking for relatively modest tax savings using multiple nil rate bands.

For example, the change is helpful for excluded property trusts (trusts set up by foreign domiciled settlors holding foreign situs property) where there is only a small amount of UK situated property which is relevant property. The rest of the property in the trust can now be ignored in calculating the rate of tax at the ten year anniversary and the UK property receives the full nil rate band.

It can also be useful where a pre-2006 trust has a mix of funds with qualifying (pre-22 March 2006) and non-qualifying (post-21 March 2006) interest in possession beneficiaries. The value of the former when it became comprised in the trust can now be ignored in calculating the rate of tax on the latter.

The losers

Those using pilot trusts to multiply nil rate bands were the losers. The value of same day additions is now included in calculating the rate of tax (Inheritance Tax Act 1984 s 68(5)(e).

Same day additions are defined in s 62A. Broadly, there is a same day addition where property is added to two or more relevant property trusts on the same day or the value of either is increased on the same day. (Thus an addition to a disabled trust is ignored even if it occurs on the same day as an addition to the relevant property trust as it is not relevant property.)

In calculating the hypothetical transfer used to calculate the tax rate on Trust 1, you must now include:

1. the value of the same day addition in Trust 2 at the date the addition was made (s 66(4)(d)); and
2. the value of whatever relevant property was comprised in that other settlement on the date it commenced (s 66(4)(e)).

> **If the settlement needs cash, arrange for someone other than the settlor to do it.**

There are certain exceptions to same day additions: small increases in value of £5,000 or less after 9 December 2014 are not same day additions if the transfers of value are by lifetime disposition (i.e. not on death). Same day additions to charitable trusts are also excluded.

What about the position for trusts where property was added on the same day before 10 December 2014? These are protected provided that there have been no additions to the trust by the settlor subsequently (under s 62B, additions to existing trusts made by will on deaths before April 6 2017 are also excluded as same day additions). The smallest lifetime addition by the settlor after 9 December 2014 to existing trusts, even if within the annual exemption or under £5,000, will potentially take a pre-2014 settlement out of protected status and the earlier same day additions are included.

A pre-2014 settlement which is still a protected settlement at the expiry of the period of two years after the settlor's death (the period in which the testator's testamentary dispositions might be altered by a deed of variation) is no longer at any risk of losing its protected status.

In summary

Given that there are still many trusts around that were set up and funded with same day additions before December 2014, it is sensible to avoid additions to such trusts by the settlor now. If the settlement needs cash, arrange for someone other than the settlor to do it. If the settlor then dies leaving a will which adds property to the pre-December 2014 settlement, give careful thought to appointing the property away from the settlement within two years of the death, taking advantage of Inheritance Tax 1984 s 144.

It is possible to 'undo' the property added by will to the trust by an absolute appointment out of the trust or an appointment onto immediate post-death interest in possession trusts within two years of death.

A second article by Emma Chamberlain on the future use of multiple trusts will be published in March 2022.

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Food tax
Making a meal of it?

Why certain foods are taxed, and how to negotiate the apparently arbitrary distinctions between zero-rated and standard-rated food.

by Dr Michael Taylor

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Key Points

What is the issue?
The UK's VAT legislation – and the attendant case law – contains any number of peculiar and apparently arbitrary distinctions between zero-rated food and standard-rated food.

What does it mean for me?
'Food of a kind used for human consumption' – within the meaning of the VAT Act – has never been explicitly defined. Rather, the UK courts have tended to use the perception of 'the ordinary man' as to what constitutes food.

What can I take away?
Deciding which rate of VAT should be applied to food products is a persistent problem for businesses, their advisors, HMRC and the courts. The existing legislation is complex and occasionally irrational.

If the man on the Clapham omnibus knows anything about VAT, he probably knows that Jaffa Cakes are zero-rated but that chocolate biscuits are standard-rated as confectionery. If he knows anything else about VAT, he probably knows that the UK's VAT legislation – and the attendant case law – contains any number of peculiar and apparently arbitrary distinctions between zero-rated food and standard-rated food.

The decision of the Upper Tribunal in *Nestle UK* [2018] UKUT 29 (TCC), for instance, has confirmed that banana and strawberry flavoured Nesquik drinks are standard rated, but that chocolate flavoured Nesquik is zero rated because it contains cocoa, or at least a 'preparation or extract thereof'. Fancy a bottle of water? You'll pay VAT on that, but not if you buy a pint of milk instead. At the same time, a packet of salted nuts attracts VAT at 20% but there is no VAT on a packet of nuts which are still in their shells.

So what lies behind the seemingly bizarre legal framework for taxing food?

The origins of VAT food legislation

Upon joining the European Community in 1973, the United Kingdom was obliged to impose VAT in accordance with the terms of the Second VAT Directive of 1967. However, this Directive provided only a skeletal outline of the VAT system, leaving many things up to the member states themselves. The UK therefore enacted VAT by way of the Finance Act 1972, within which Section 12 and Group 1 Schedule 4 provided for the zero rating of food.

When the Sixth VAT Directive was enacted in 1977, thereby creating the first harmonised VAT system, nothing provided explicitly for zero rating. However, member states were allowed to maintain their zero ratings as 'stand-still provisions'; hence food to this day being zero rated by way of the Value Added Tax Act 1994 Sch 8 Group 1.

In terms of 'general items', 'excepted items' and 'items overriding the exceptions', the provisions of VATA 1994 Sch 8 Group 1 are practically identical to the provisions first enacted in Finance Act 1972. The application of zero rating to food products today therefore derives almost entirely from the rationale behind the original 1972 provisions. So what were the reasons for zero rating some food products but not others?

The answer lies in the old purchase tax regime, introduced as a wartime measure in 1940. At the time, the government vowed that there would be 'no purchase tax on food, drink or foodstuffs' in order to 'secure the price of certain essential foodstuffs'.

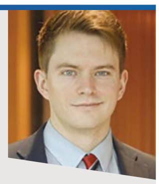
In 1963, however, the Purchase Tax Act listed 35 groups of items on which the tax would be charged. Once again, the food groups are practically identical to the 'excepted items' in today's VAT Act: ice cream, manufactured beverages (but not milk, tea, coffee or cocoa) and confectionery (but not drained cherries or candied peels); a later measure added potato snacks and salted or roasted nuts (except those in their shells).

The rationale for taxing these items but not others was laid before Parliament in the Budget Statement of 1962. Selwyn Lloyd, the Chancellor of the Exchequer, told the House of Commons that the tax on sweets 'will be welcomed by the medical professions, or ought to be'; in the same breath, he praised the beneficial health effects of 'games, physical, exercise and club facilities'.

The rationale for the tax was clear: it was to deter expenditure on items of food considered harmful to people's health. Yet if this is the underlying purpose of the tax, is there a universal definition of 'food' too?

Defining 'food'

The UK courts have been considering the meaning of 'food' for more than a hundred years. In 1918, in *Hinde v Allmond* (1918) 118 LT 447 at 448, a case which concerned illegal hoarding during the First World War, Avory J held that 'the word "food" must be interpreted in its primary sense – namely, something taken into the system for nourishment and not merely as a stimulant'.



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It remains the case, however, that 'food of a kind used for human consumption' – within the meaning of the VAT Act – has never been explicitly defined. The UK courts have tended to use the perception of 'the ordinary man' as to what constitutes food, a test first articulated by the VAT Tribunal in *Marfleet Refining Company* [1974] V129, a case concerning cod liver oil. But is the 'ordinary man' test still fit for purpose?

In his judgment in *Procter & Gamble* [2009] EWCA Civ 407, Toulson LJ recognised that the 'ordinary man' test was likely defective. 'I rather regret the introduction of the ordinary man in the street into this area,' he held, 'because I do not regard it as necessary and it has led on to a distracting argument about what knowledge should be attributed to that hypothetical person'. Is it time, therefore, to bin this test for good? If so, what could taxpayers, advisers and the courts use as a replacement?

Deciding which rate of VAT should be applied to food products is a persistent problem for businesses their advisers, HMRC and the courts.

One possibility is the judgment of the CJEU in the case of *X* (Case C-331/19), which considered whether aphrodisiacs could be regarded as food for VAT purposes. Although in a post-Brexit world the Principal VAT Directive is no longer supreme in post-2020 accounting periods, and though it is a vexed issue whether the terms in the Principal VAT Directive Annex III can be applied across the VAT system, the CJEU in this case arrived at two workable definitions.

First, the court concluded that 'foodstuffs for human consumption' should be defined as 'products which contain nutrients and which are consumed principally in order to provide the human body with those nutrients'. Second, the court considered that food supplements should be defined as 'products which are not foodstuffs but which contain nutrients and are consumed in place of foodstuffs in order to provide the body with those nutrients, and also products consumed with a view to enhancing the nutritional functions of foodstuffs or their substitutes'.

These definitions might be unwieldy, but would their implementation through revised VAT legislation bring greater clarity to the law? Would they better serve the policy goals identified by the UK government in the 1960s and 1970s? Would this not be a prime case for applying the principle of statutory construction known as 'always speaking', so that the meaning of 'food' could change in law as its meaning changes in reality?

Fixing the system

Deciding which rate of VAT should be applied to food products is a persistent problem for businesses, their advisors, HMRC and the courts. The existing legislation is complex and occasionally irrational: why, for instance, should protein drinks be excluded from zero rating when they: (i) satisfy the legislative purpose of delivering nutrition to consumers; and (ii) are derived from milk, which is zero rated?

Moreover, the existing tests available to courts can often bring confusion rather than clarity. The perception of 'the ordinary man' is surely subjective because the opinion of one person on the Clapham omnibus could easily differ from the person sitting next to them. The test of how a food product is 'held out for sale', most recently applied by an appellate court in *The Core (Swindon)* [2020] UKUT 301 (TCC), is surely subjective too: isn't such a thing in the eye of the beholder? An objective alternative is perhaps to assess whether a product is *regulated* as food, and apply the tax treatment accordingly.

Now that the United Kingdom has left the European Union, Parliament and the government – by way of statutory instruments – have the power to expand the scope of zero ratings that, until 2020, had been frozen as stand-still provisions. It would seem an opportune time for a fresh look at how VAT is applied in this area, with an objective of reforming the rules into a more sensible, principled regime fit for the modern world and one which provides increased clarity for all participants.

NEWSDESK ARTICLES

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WELCOME

February Technical Newsdesk

I started to get a sense of deja vu when thinking about my introduction to this month's Technical Newsdesk. Looking back to last year's edition, I wrote about our efforts to persuade HMRC to introduce some easements in relation to the self-assessment deadline. Fast-forward 12 months and here we are again.

Well, not quite. It took a significant amount of effort, encouragement and member feedback last year (from CIOT, ATT and LITRG, as well as other professional bodies) before HMRC made their announcement to waive late filing and late payment penalties for self-assessment returns filed before 1 March 2021. Perhaps at the time this was understandable. We were in uncharted territory and, due to the sterling efforts of agents, filing rates were holding up pretty well against previous years. So it was not until 25 January, less than a week before the deadline, that HMRC relented and made their announcement.

This year, we were faced with a similar problem, though arguably more acute, with increased numbers of COVID infections and staff absences during the self-assessment peak, a time when many agents are already working at full capacity.

Credit goes to HMRC, therefore, for acting earlier this year with their announcement on 6 January. Yes, we had already started discussions with HMRC about the self-assessment deadline and provided them with feedback from our members and volunteers, but HMRC moved much more quickly this year.

No doubt last year's 'blueprint' helped, and in fact the easements this year are the same as last year; more information on the specifics can be found on the CIOT, ATT and LITRG's websites.

Looking back to last year made me reflect on our relationship with HMRC. Without stealing the thunder of our annual reports, in terms of pure numbers our engagement with HMRC continues to increase and is currently at unprecedented levels.

I also think that we have seen an improvement in the quality of our relationship with them. So, when HMRC do things we have recommended or support, we welcome them. And when they do things we disagree with, it is right that we challenge them in an appropriate way. But, all in all, we believe that we currently have an open and constructive working relationship. Long may that continue.

GENERAL FEATURE

Finance Bill committee stage update

MPs have finished committee stage debate on Finance Bill 2021-22 after nearly 10 hours of debate. All 102 clauses and 16 schedules were passed, along with 12 technical government amendments (and none of the opposition's).

CIOT, ATT and LITRG together provided 16 briefings and representations to the MPs considering the Bill, to support the scrutiny process and highlight possible flaws and areas of uncertainty. They were cited 17 times during the debate. Read them at tinyurl.com/5n767e6e.

Committee of Whole House

Committee stage began with Committee of Whole House (CWH) on Wednesday 1 December. CWH takes place on the floor of the House of Commons. The clauses for debate are selected by opposition parties, and any MP who wishes to can contribute to the debate.

The first CWH group of clauses included the only clause opposed outright by the opposition (clause 6 – the cut in the banking surcharge), as well as changes to the tax rate for dividend income, basis period reform and the annual investment allowance (AIA).

ATT, CIOT and LITRG all drew attention in briefings to the additional burden the basis period changes will bring for those businesses that need to use an accounting date other than the tax year end. Quoting from the CIOT briefing, the Shadow Financial Secretary James Murray asked what support there will be for those affected. The Financial Secretary Lucy Frazer responded that most affected businesses are represented by a tax agent, but HMRC are exploring how best to help unrepresented taxpayers through the change.

Clause 12 extends the higher limit of AIA for a further 15 months. ATT's briefing noted that a trap in the transitional provisions may result in a business having its effective AIA limit restricted for a time to significantly less than either of the limits being transitioned between. ATT suggested an amendment to rectify this, which was tabled by the SNP. Responding, the minister said she was alive to the points raised, 'but we believe that businesses should have sufficient time to plan to take advantage of the maximum entitlement for the AIA for any investment.' The amendment was not pressed to a vote.

A further group of CWH clauses covered a range of compliance-related measures. On promoters of tax avoidance, a CIOT briefing was broadly supportive of the measures but observed that there was a feeling among tax professionals that HMRC frequently ask for new powers, while not making full use of those they already have. On the economic crime (anti-money laundering) levy, a CIOT/ATT briefing warned that any lowering of the threshold to take in smaller firms could contribute to driving them from the market, or incentivise de-professionalisation (leaving professional bodies). Both these points were put to the minister but did not obtain a direct response.

Public Bill Committee

The remaining clauses were considered 'upstairs' by a committee of MPs over five sittings in December and January.

Part two of the Bill introduces the residential property developer tax (RPDT). CIOT has praised the government for aligning the new tax with corporation tax mechanisms and this was noted by the Shadow Financial Secretary during debate; however, he also drew attention to a number of CIOT's continuing concerns. These included why the supposedly time-limited legislation had not come with a sunset clause. The Financial Secretary simply reiterated that the tax *will* be time limited and will be repealed once £2 billion has been raised. The minister gave no indication that build-to-rent profits could be brought into scope of RPDT in the future, saying that it is 'a very different sector in which profits are earned in a different manner at a different time'.

During debate on 'greening' the tax system, the Shadow Exchequer Secretary Abena Oppong-Asare highlighted the CIOT's climate change tax policy road map. The Exchequer Secretary Helen Whately thanked her and said that HMRC is exploring options to further strengthen how they measure the environmental impact of tax measures. In response to a question about road pricing, the Exchequer Secretary said only that the government 'recognise the need for motoring taxes to keep pace with the transition to electric vehicles'.

The Bill contains a small change increasing the size of the Office of Tax Simplification's board. CIOT suggested to the committee that the government's failure to adopt most substantial OTS recommendations posed broader questions about the OTS's role and the government's commitment to simplification.

This was put to the Financial Secretary by her Labour shadow, but she responded that the OTS was 'performing an important function in making recommendations which the government can then look at' whether or not these are taken up. She did not accept the CIOT suggestion that the government should commit to responding formally to every OTS recommendation within a prescribed timeframe.

In response to other points raised by CIOT and LITRG via opposition spokespeople:

- **Pension annual allowance charge:** The minister opposed a CIOT-inspired amendment to move a notification deadline to avoid taxpayers having to make arrangements unreasonably hastily, arguing it could leave individuals liable to pay a tax charge out of their own pocket in some circumstances.
- **Normal minimum pension age:** The minister agreed the importance of providing advice in this area.
- **Theatre tax credit:** The minister acknowledged that productions where work began just before the higher rate commenced will not benefit from it, but said this was because the measure was targeted to incentivise new activity.
- **CGT reporting and payment:** The minister said that HMRC regularly engage with agents and other stakeholders but did not indicate any plans for raising awareness around this process more widely.
- **Dormant Assets Scheme:** The minister was unable to say when guidance would be published.
- **Uncertain tax treatment:** The minister defended the measure as proportionate, stressing it would only affect the largest businesses.
- **Discovery assessments:** The minister argued that while this was retrospective *legislation*, it was not retrospective *taxation* as the tax was always due.

For detailed reports and further updates see: www.tax.org.uk/blog/1

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EMPLOYMENT TAX

Off-payroll working: House of Lords inquiry

Representatives of the CIOT and LITRG have given evidence to the House of Lords as part of their follow-up inquiry on the implementation of the off-payroll working rules in the private sector.

In December, CIOT and LITRG representatives gave evidence to the House of Lords Economic Affairs Finance Bill Sub-Committee as part of their follow-up inquiry on the implementation of the off-payroll working rules in the private sector, and how these rules are working in practice (tinyurl.com/4fk2u9er).

The sub-committee asked how the implementation of the new off-payroll working rules has gone for businesses overall. Colin Ben-Nathan, chair of the CIOT's Employment Taxes Committee, commented that HMRC are much better prepared (such as with a better Check Employment Status for Tax (CEST) tool and better communications) than the rollout to the public sector in 2017, 'which was very rushed'. Meredith McCammond, LITRG Technical Officer, added that a lot of businesses were supported by agents who have already been through the 2017 changes.

The sub-committee then asked whether the CEST tool is fit for purpose. McCammond commented that non-experts need a tool like CEST and that there are lots of cases that are not on the borderline and are not complex. In a follow-up question on how to resolve confusion with CEST, Ben-Nathan replied that the government said that they would look at employment taxes and employment law and see whether they could be aligned, but until there is some sort of codification for employment tax purposes 'we are trying to nail blancmange to a wall, in many ways'. As a comparison, he noted that the codification of how to define tax residence after 2013 was better than the system beforehand.

McCammond added that it is high time for a clearer and simpler employment status landscape for both businesses and workers to navigate and, to that end, it is very disappointing that we have not seen any response yet from HMRC on the employment status consultation. (This is discussed further in the article about employment status below.)

Following a question about umbrella companies, McCammond commented that LITRG has not seen any particular spikes in queries from workers about umbrella companies, which could mean that workers seemed to have managed to navigate themselves successfully into 'an umbrella safe harbour', though she also cautioned that problems with non-compliant umbrellas often take a while to surface. Both McCammond and Ben-Nathan stressed the importance of effective publicity. Asked if bad companies could drive out the good, McCammond said: 'There are a lot of workers out there who are a bit disgruntled about their reduction in net pay as a consequence of the changes, and some umbrellas will have entered the marketplace with their eye firmly on that gap in the market. As a consequence of that, disguised remuneration schemes have proliferated.' That said, Ben-Nathan was less sure that the new rules would increase avoidance, commenting that he 'would be surprised if there should somehow be some deterministic link between off-payroll working and an increase in avoidance'.

In a subsequent evidence session, the Financial Secretary to the Treasury (FST) and HMRC gave evidence to the sub-committee. Asked if the new off-payroll working rules have achieved their objective, the FST said yes, because people are being treated equally. While accepting that the 2017 public sector changes were 'a little rushed', the FST commented that HMRC learnt the lessons for the roll-out to the private sector in 2021 when it comes to education and making the system simpler.

Evidence was given at previous sessions that the rules mean some people are either not being offered work or are being offered work only if they accept PAYE status. In response, HMRC's Pete Downing stated: 'There is a defined process for dispute by the contractor with the engager who is making a determination of status for a PSC. You have heard evidence from IPSE that that is having an effect and changing people's status in some cases, which is encouraging to hear.'

In regard to the CEST tool, the FST said HMRC have decided that in order for it to be easy to use, not be expensive and not take up too much of people's time, HMRC will deal with the fact that only 80% of cases get a clear determination from CEST ('the 20% can have some telephone support to come to their determination').

Fuller reports on the sessions, including the impact of the *HMRC* v *Professional Game Match Officials Ltd* case on mutuality of obligation and CEST, can be read at www.tax.org.uk/employment_tax_codification and www.tax.org.uk/2017_off_payroll_changes.

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GENERAL FEATURE

House of Lords committee reports on basis period reform and uncertain tax treatments requirements

A House of Lords report has again criticised the government's approach to consultation on significant changes to the tax system, calling for more work to be done to manage the impact of basis period reform and for greater support for businesses required to notify uncertain tax treatments. The peers also expressed concerns about current service levels within HMRC, asking that it has sufficient resources update its published guidance on an ongoing basis.

The Lords Economic Affairs Finance Bill Sub-Committee report (tinyurl.com/2p95a6m5) addresses the two main areas covered by its inquiry: basis period reform; and notification of uncertain tax treatments. The report makes substantial criticisms of the government's approach on both. More broadly, the sub-committee calls on the government to commission an independent report into HMRC customer service levels and capacity to implement change.

To reach their conclusions, the sub-committee took evidence from a range of witnesses including CIOT, ATT and LITRG.

All three bodies provided both written evidence (www.tax.org.uk/ref842, www.att.org.uk/ref384 and litrg.org.uk/ref2590 respectively) and oral evidence. The final report cites CIOT in 22 places in the main text, ATT nine times and LITRG 11 times (with further citations in the footnotes).

Basis period reform

The sub-committee considers the consultation on basis period reform 'flawed', saying it is unclear why four years after the original consultation the new and different basis period reform proposals were published in haste. However, the peers do not recommend that basis period reform should be abandoned now, even though they do not consider that a compelling case has been made for it.

The report cites ATT's view that the current rules are familiar to many and that once a business is established, they are 'fairly straightforward' and logical to apply in practice; however, it added that ATT appreciates that applying the current rules may be more complex for the unrepresented taxpayer. Peers also noted the concern expressed in oral evidence by CIOT's Richard Wild that the measure seems to 'trade one set of complexities that arise on fairly one-off occasions for those that occur on an ongoing basis year in and year out'.

However, the report acknowledged LITRG's view that one effect of the new rules would be to encourage new businesses to choose either 31 March or 5 April as their accounting date, which would help those who are newly self-employed to better understand their tax affairs from the outset. LITRG's urging of HMRC to make it as easy as possible to change accounting date is also noted, as is ATT, LITRG and ICAEW's keenness to ensure that if businesses make such a change before the transition year, they will still be able to spread the excess profit.

The sub-committee welcomes the government's recognition that further work needs to be done on the impact that this reform will have on businesses which cannot align their accounting periods with the tax year, and a reassessment of the additional compliance costs which businesses in this position will bear because of the reform.

On overlap relief, the report cites CIOT's view that a business or its agent should be able to obtain or check overlap figures with HMRC, and recommends that by 5 April 2022, HMRC should commit publicly to providing this information.

On preparation for change, the report cites CIOT and LITRG concerns on making sure that information reaches the right target audience. The peers recommend that HMRC directly contacts all taxpayers with accounting periods which are not aligned with the tax year to alert them to the change and its implications for them, and to inform them of what support is available.

The report also recommends that, for businesses which do not have a 31 March to 5 April year end, Making Tax Digital should be deferred until at least 2025/26.

Uncertain tax treatments

The sub-committee highlights CIOT's view that a Stage 1 consultation should have been undertaken in relation to this measure. This, they note, could have considered alternative ways of addressing uncertainty within the tax system, rather than focusing on one specific proposal.

The sub-committee notes the ATT's Emma Rawson's view that there are more fundamental things (such as the complexity of tax legislation and the availability of HMRC support for taxpayers) that should be looked at if the legal interpretation part of the tax gap is to be tackled. Such criticism led the peers to state their disappointment that the measure remains neither appropriately targeted nor proportionate. The peers also note CIOT's questioning of whether such a small reduction in the legal interpretation tax gap justifies the additional compliance burden.

Drawing on CIOT concerns, the sub-committee says that with businesses required to notify HMRC when they take a view on the law that differs from HMRC's 'known view' (the second trigger), the government must ensure that HMRC has sufficient resources to ensure that their published guidance is updated on an ongoing basis.

Before any third trigger of uncertainty is added, an evidence-based evaluation of the measure should be carried out and, if it shows that the requirement is not delivering the benefits that HMRC expect, then the notification requirement should be repealed in its entirety, says the report.

On compliance, the peers report ATT and CIOT warnings that compliant businesses may be likely to over-disclose uncertainties, leading to HMRC being 'flooded' with notifications. The sub-committee calls for the number of customer compliance managers to be expanded, irrespective of the introduction of this measure, and states that if the measure goes ahead, the government should commit to ensuring that every business affected has a customer compliance manager.

Broader conclusions and recommendations

In addition to comments on the two main proposals, the sub-committee observes that its analysis 'has identified common themes applicable to both proposals, some of which have also arisen in previous reports by the sub-committee'. These are set out briefly in a fourth chapter of the report.

The first is a failure to follow the tax policy framework. The sub-committee notes CIOT's view that the process works well 'when the consultation process is followed in full' but concludes (along with CIOT and others) that neither of these measures followed the process in full. The report recommends that in future all consultations involving a significant reform of the tax system should begin at Stage 1. They invite the government to make a renewed commitment to that effect.

The sub-committee also addresses the issue of resourcing of HMRC. Describing the evidence about current service levels within HMRC as 'troubling', they recommend that the government commission an independent report on HMRC customer service levels and capacity. This should consider what will be needed in terms of additional resourcing for HMRC to be able to

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PERSONAL TAX

Remittance basis: loans secured on foreign income or gains

The CIOT and other professional bodies have published a note on the treatment of loans secured on foreign income or gains by remittance basis users.

The note by the CIOT, ICAEW and STEP considers the situation where a remittance basis user has incurred a debt either in the UK or abroad and the money borrowed or property deriving from it is brought to the UK or used in the UK in such a way as would constitute a remittance. The note outlines HMRC's original approach to this situation in 2008, their change of approach in 2014 and their latest revised position following changes to HMRC's Residence, Domicile and Remittance Basis Manual in late 2020 and 2021.

Members will need to consider the implications of this latest change of practice when filing on behalf of remittance basis users and the historic compliance issues.

The note is to assist members in considering the technical and practical issues in each client's specific context. The note is published on the CIOT's website at www.tax.org.uk/treatment_of_loans.

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deliver basis period reform and MTD for income tax without any adverse effect on overall service levels.

A fuller write-up of this report can be read at www.tax.org.uk/basis_period_reform_peers.

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EMPLOYMENT TAX PERSONAL TAX
GENERAL FEATURE

Employment status: where are we now?

Employment status is at the core of the tax system. It determines the taxes that a worker, and the business the individual works for, must pay. Yet we know that the tax system, or sometimes HMRC administration, can effectively encourage some engagers to offer work on falsely self-employed terms.

In response to some concerns and recommendations made about the employment status regime in the Matthew Taylor 'Good Work' Report, the government issued a consultation in February 2018 (tinyurl.com/yv5dz2x3). This considered whether to legislate to improve the clarity of the employment status tests and whether to align the employment status regimes for both tax and employment law purposes. LITRG's response, which focused on false self-employment, can be found at www.litrg.org.uk/ref315. Over three years later, the consultation is still labelled with 'feedback being analysed'.

This is hugely disappointing, given the fact that we continue to see low-income workers grappling with false self-employment, particularly (in LITRG's experience) in the construction industry and social care.

False self-employment continues to exist, in part, because many workers think that self-employment is a choice rather than something decided by fact. Particularly in the construction industry, workers may be told that because they have a Unique Taxpayer Reference (UTR) from previous periods of self-employment, their position is temporary or lacks permanency, or because they provide their own small tools, they are self-employed.

Worryingly, there are probably some people who are falsely self-employed in the construction industry who do not even realise that they are being treated as self-employed until something goes wrong; for example, being ineligible for the Self-Employed Income Support Scheme (SEISS) grants because they completed the Employment pages and not the Self Employment pages of their Self-Assessment tax return. Factors unique to the construction industry – self-billing invoices and the Construction Industry Scheme (CIS) (being given 'payslips' and having tax deducted at source) – mean that unscrupulous engagers can more easily disguise false self-employment.

In social care, the position (which we raised ourselves in September 2021's edition – www.taxadvisermagazine.com/se_livein_carers) is neatly summed up in a recently published 'Worker voices in the social care sector' research report (tinyurl.com/59bdynke) commissioned for the Director of Labour Market enforcement:

> 'The use of self-employment and introductory platforms in the care sector without adequate safeguards and regulation is concerning. While some of the care workers we interviewed are genuinely self-employed now, their previous experiences and the account of other participants suggest that bogus self-employment might be a significant problem in the sector, particularly in live-in care, facilitated by online platforms and introductory agencies.'

There are undoubtedly other sectors affected too. Low paid workers, who will not usually challenge engagers even if they have an inkling that something may be wrong through fear of losing the work, have limited access to recourse through the courts. So they must rely on effective state enforcement to help protect them from false self-employment. However, the problem here is that there is no body looking at the overarching issue of 'status' from an employment law perspective. Moreover, from a tax law perspective, in our experience, some engagers who take part in this practice seem to consider it unlikely that they will ever be challenged by HMRC.

This is because there is no obvious route for workers to report 'false self-employment'. There seems to be no clear protocol in place for dealing with those who telephone HMRC presenting false self-employment. There are minimal risks of HMRC investigating engagers on a self-starting basis (particularly in the construction industry, as tax is already being paid via CIS). A more proactive and visible approach to enforcement would act as a serious disincentive to those engagers seeking to gain a tax advantage and could thus cut down on numbers circumventing employment rights legislation.

We have raised these issues with HMRC, which we hope lead them to explore what more can be done in this area – without waiting for the employment status consultation to report.

We understand that HMRC would like to gather some further evidence on the scale of the problem and that they would like to further explore the insight and information LITRG have given them (around causation, sectors involved, etc.) with other stakeholders. We would be interested in hearing from any members in practice, if you have seen false self-employment in your work, e.g. when preparing CIS tax returns (which we will then share anonymously with HMRC), as this could further bolster the evidence base and help us move the issue forward.

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INTERNATIONAL TAX
LARGE CORPORATE PERSONAL TAX

Corporate re-domiciliation: CIOT response to government consultation

CIOT responds to government consultation on a new corporate re-domiciliation regime, suggesting that such a regime would be helpful for business, but that to be successful it must be straightforward and easy to comply with in practice.

The CIOT has responded to the consultation published by the government on 27 October 2021 on 'Corporate re-domiciliation'. Representatives of the CIOT met with HMT and HMRC to discuss the proposals contained in that consultation document on 7 December 2021, and our comments in our response built on the discussions at that meeting. In particular, we focused on the comments in chapter 5 (Tax) of the consultation document and consideration of the possible tax consequences of the regime. The scope of this consultation goes beyond tax and also discusses other aspects of UK law in relation to companies that we note will also be important.

A re-domiciliation regime would enable a foreign-incorporated company to change its place of incorporation to the UK, while maintaining its legal identity as corporate body. The policy aims of the proposals are to strengthen the UK's position as a global business hub and an open, competitive, free market economy. It is intended that a new regime would give companies maximum continuity over business operations and we welcomed the early stage of consultation on this proposal.

Our response said that a re-domiciliation regime that permits inward and outward re-domiciliation would be helpful for businesses that wish to relocate to the UK, as well as those seeking to relocate abroad, whether in whole or in part. It will make the process more straightforward, provided that there is clarity and certainty around the operation of the rules. However, we also said that for inward re-domiciliation, this regime alone is unlikely to induce businesses to move to the UK. Whilst it may 'tip the balance' by making it more straightforward for them to do so (and indicate more broadly that the UK is open to attracting business), we suggested that businesses are likely to be coming primarily for other reasons, including a favourable view of other more substantive aspects of the UK's tax system. Therefore, we encouraged the government not to lose focus on seeking ways to make the UK's tax system better overall, saying this is more likely to have a positive impact on the UK's global competitiveness than a re-domiciliation regime alone, particularly for active trading companies and not just holding companies.

We also said that the attractiveness of the regime will rest to a large extent on its perceived simplicity and clarity in practice. In order to deliver a straightforward regime, we said that we would like to see, so far as possible, parity between companies originally incorporated in the UK and those that re-domicile here. We also said that we would like parity between the rules applying in relation to tax migration (by which we mean the way that businesses can currently become tax resident in the UK through existing mechanisms of moving central management and control, subject to relevant double tax treaties) and the new re-domiciliation regime.

Our full response can be read at: www.tax.org.uk/ref870.

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INDIRECT TAX

Recovery of VAT on the charging of electric vehicles

HMRC has published a Revenue & Customs Brief 1/22 that sets out HMRC's intention to review issues arising on the recovery of VAT when charging electric vehicles for business use.

Revenue & Customs Brief 1/22 (tinyurl.com/4v8evy8s) 'Reviewing how to claim VAT when charging electric vehicles for business purposes', sets out the key issues under review which are:

- the VAT recovery position where an employee is reimbursed by the employer for electricity for charging an electric vehicle for business use; and
- identifying simplification measures to reduce administrative complexities of accounting for VAT on private use of electricity.

The new paragraph 8.4 in VAT Notice 700/64 (tinyurl.com/33xyhhrt) also confirms that HMRC are reviewing the rules.

Why are the VAT recovery rules being reviewed?

Section 2 of Revenue & Customs Brief 1/22 refers to HMRC's earlier Revenue & Customs Brief 7/21 (tinyurl.com/25bnmm4e) 'VAT liability of charging of electric vehicles (EV)', and mentions that since the publication of RCB 7/21, HMRC and HMT had received representations from stakeholders. This included a representation by the CIOT, where we raised various points on both green taxation policy and VAT technical points.

What are the key issues for VAT?

1. VAT liability: There are different VAT rates applied to the supply of electricity used for charging electric vehicles depending on the location of the charging point. Where the car is charged at home, the supply will normally be subject to the reduced rate of 5%, as it meets the definition for domestic use 'premises' set out in Note 5(g), Group 1 Schedule 7A to VAT Act 1994 or Note 6 Group 1 Schedule 7A to the VAT Act 1994. When charging an electric vehicle at the workplace or public place, this will normally be standard rated, as HMRC does not consider these supplies to meet the reduced rate definition of 'any premises' in Schedule 7A. It is not anticipated that the VAT liability position will form part of the current review.

2. VAT recovery: A key issue for the VAT recovery position is that under the current rules, where employees charge their electric vehicles at home and use those vehicles for business mileage, the VAT incurred on this electricity is not able to be recovered in expense claims. It is deemed to be private use, as it is supplied to the individual rather than the business.

An employee may charge their company electric vehicle at home, at the workplace and at some other public site when working away from the place of work. A simplified overview of the current VAT recovery position on the costs of electricity is set out in the table below. This shows that the administration on VAT accounting could be cumbersome, particularly when the car is used for both business and personal mileage.

Location of electric vehicle charging point	VAT rate	Input VAT recovery position	Input VAT administration
Home	5%	None, as this cost is currently deemed to be all private use as it is supplied to the individual not the business	No VAT can be recovered by the business on any expense payment made to the employee for these costs
Workplace	20%	Business miles only	Apportion employer electricity bill for charging facilities
Public site	20%	Business miles only	0.67p per mile

Next steps

Once HMRC complete their review, there will be further updates published in guidance confirming any changes to current policy. In the meantime, if you have any feedback on the VAT recovery position for the charging of electric vehicles, please contact technical@ciot.org.uk.

Jayne Simpson jsimpson@ciot.org.uk

GENERAL FEATURE PERSONAL TAX
MANAGEMENT OF TAXES

Tax and the Woodland and Peatland Codes

Do you have clients involved or considering getting involved in Woodland or Peatland Code projects and the carbon credit market? If so, we'd be keen to hear from you.

The ATT is currently working with a number of other bodies on the creation of a group to look at the potential tax and accounting treatment of carbon credits created under the Woodland and Peatland Codes. We understand from members that this is an area attracting increasing interest from both landowners interested in bringing land into the schemes and those concerned about their carbon footprint who are looking to offset their emissions.

The aim of these codes is to make various 'green' projects economical by creating an income for landowners taking part through verifying the climate benefits in the form of carbon credits. Both verified credits and potential (future) credits can be sold by the landowner to businesses or individuals looking to offset their carbon emissions.

The carbon credit market is still in its infancy, and the two most well-known codes at present are the Woodland and Peatland Codes. These voluntary codes are intended to provide assurance to purchasers of carbon credits that a removal or reduction of CO_2 emissions has occurred.

In the case of the Woodland Code, carbon is sequestered in growing trees, while for the Peatland Code, carbon reduction occurs through the restoration and enhancement of peat bogs. A healthy peat bog should be a carbon sink, but if poorly maintained, drained or damaged then a bog will instead release carbon.

There is currently very little guidance on the tax treatment of carbon credits and the group is proposing to go 'back to basics' to look at some of the conceptual issues around what a carbon credit is for tax purposes, and thus how to deal with the income and also potential capital taxes issues for landowners (and purchasers).

The group will include legal and accounting experts and will be seeking input from the creators of the Woodland and Peatland Codes. Our hope is to reach a consensus which we can discuss with HMRC and HMT, with a view to persuading them to take a more active interest in this area and issue guidance as appropriate.

We are very keen to hear from members involved in these projects. We are interested not only in your views of the tax treatment, but also in understanding more about the practical, day to day issues of projects such as the legal structures involved and how project cash flow operates. The group also intends to consider similar schemes, including those involving biodiversity and nutrient credits, and we would be keen to hear from members who have clients involved in any of those areas. If you would be interested in commenting on any of these issues, please let me know direct on the email below, or contact atttechnical@att.org.uk.

Helen Thornley *hthornley@att.org.uk*

INDIRECT TAX

VAT group registration delays: interim guidance

The COVID pandemic has affected HMRC service levels, including increasing the waiting times for processing VAT group registration applications. We have received guidance from HMRC outlining the treatment to be adopted while waiting for a response from HMRC.

There are some issues arising that are particular to VAT group registrations when the application takes longer than usual to be processed. The CIOT has been receiving member feedback on the impacts arising from delayed processing, the main examples being:

1. For applications that include businesses already registered for VAT, VAT returns may become due during the waiting period. This causes uncertainty as to whether these returns should continue to be submitted on time or held back, as the transactions would normally be reported in the new group registration's first VAT return. Taxpayers have received differing advice on this.
2. Will the effective date of registration for the VAT group be changed if applicants submit their own separate VAT returns while the group registration is being processed?
3. What is the VAT liability of transactions that should be deemed 'intra-group' following the requested date of the group registration, as these would normally not be subject to VAT? Do you charge VAT in the meantime, and reverse this treatment once the group registration is activated?
4. Will penalties be applied where a particular behaviour has been adopted which HMRC subsequently dispute?

The CIOT, ATT and other stakeholders have been raising these VAT grouping registration issues with HMRC in the various stakeholder forums that we attend.

Interim guidance

HMRC has provided some interim guidance that is published on the CIOT's and ATT's technical news page (tinyurl.com/hvnrbftm and www.att.org.uk/vat_group_reg_delays respectively). If taxpayers have received different advice from HMRC, they may wish to contact HMRC to discuss this further. If you have any feedback on group registration delays please contact technical@ciot.org.uk.

Jayne Simpson *jsimpson@ciot.org.uk*

INDIRECT TAX

UK government's 2025 border strategy

The UK government's 2025 border strategy, published in December 2020, sets out its ambition for the UK to have the world's most effective border, which is efficient, simplified and secure. This will impact on the taxation position for the cross-border movement of goods within the broader application of the strategy for businesses, logistics providers and travellers.

The CIOT has been involved with the Border Strategy project (tinyurl.com/yetn29p7) through our representation on HMRC's Joint Customs Consultative Committee (JCCC) (tinyurl.com/yrn3r2ts) and the Border Protocol Delivery Group. These forums are attended by a broad range of representative body stakeholders for the advisory, logistics and industry sectors. The CIOT's attendance at these meetings is reported in our weekly emailed newsletter with arising relevant border updates published in our technical news (www.tax.org.uk/technical-news/1).

HMRC have reviewed border processes in Australia, Netherlands, Singapore and Sweden, as these countries are identified as having certain elements that are particularly facilitative. Examples include: use of blockchain; a network platform 'single window' that interacts with numerous agencies; businesses with high compliance levels enjoying expedited customs clearance; and operating an effective EU/non-EU border.

The forum meetings that the CIOT has attended have looked at how some of these processes can be taken forward for the UK's border. At a recent meeting in respect of considering 'the single window', the CIOT was able to raise the point that any new multi-agency, multi-user single platform for the border should be future-proofed. We suggested that it will be important that potential new border taxes could be added; for example, should (hypothetically) a new green taxation policy be introduced that required declarations at the border based on CO_2 emissions on imported goods.

If you want to contribute

If you have any feedback on how you would like to improve the border processes for customs duty, excise duty or other border taxes, or if you have experience of border processes in other countries that you would like to see implemented in the UK's 2025 border strategy, please contact technical@ciot.org.uk so that we can consider these as part of our ongoing engagement with HMRC.

Jayne Simpson jsimpson@ciot.org.uk

GENERAL FEATURE

Scottish Taxes Update

Key points from the Scottish Budget for 2022/23, published on 9 December 2021, and other tax documents published by the Scottish government, as well as from meetings with the Scottish government.

The Scottish government published its Budget for 2022/23 (tinyurl.com/y5j2zw4n) on 9 December 2021.

The Scottish government's stated intention is that the Budget delivers stability and certainty for taxpayers, offers targeted support for the retail, hospitality and leisure sectors and therefore provides a foundation for economic recovery.

While Scottish income tax rates will remain unchanged for 2022/23, the starter and basic rate bands will both increase by CPI inflation. The higher and top rate thresholds will, however, be frozen at their 2021/22 levels. There are no changes being made to the rates and bands of land and buildings transaction tax. The standard and lower rates of Scottish landfill tax will, however, increase in line with the UK and Welsh rates.

A week after the Budget, on 16 December 2021, the Scottish government published four documents related to tax matters:

- a call for evidence on the additional dwelling supplement (ADS) (tinyurl.com/2p84jv5t), which is the first stage in the review of the ADS promised by the Scottish government;
- a policy evaluation (tinyurl.com/2errzvnh) of Scottish income tax changes made in 2018/19;
- the final Framework for Tax (tinyurl.com/yf5r3akj), which sets out the principles and strategic objectives underpinning the Scottish government's approach; and
- a consultation analysis (tinyurl.com/2ytm86dz) of the pre-budget consultation on tax policy and the draft Framework for Tax.

HMRC published a report (tinyurl.com/42429y86) examining Scottish taxpayer behavioural responses to the 2018/19 changes to Scottish income tax on the same day.

Both in the period leading up to the Budget and following it, the CIOT, LITRG and ATT attended a number of meetings and roundtables on Scottish tax issues. CIOT was represented at two Ministerial roundtables – a pre-budget roundtable on Scottish tax policy chaired by Tom Arthur MSP, Minister for Public Finance, Planning and Community Wealth, and a roundtable on the Fiscal Framework Review chaired by Kate Forbes MSP, Cabinet Secretary for Finance and the Economy. At each roundtable, stakeholders were given a few minutes to provide their thoughts on three specific questions, before the sessions opened up into discussion.

There was a meeting between the professional bodies, including CIOT, LITRG and ATT, and the Scottish government following the publication of the Scottish Budget for 2022/23. The Scottish government thanked us for our pre-Budget engagement and responses to the pre-Budget consultation. There was discussion about the Budget announcements and the Scottish Fiscal Commission's forecasts. Scottish government officials discussed the final Framework for Tax, and confirmed that a few changes had been made following suggestions from stakeholders. For example, CIOT and LITRG had recommended that the document should set out the roles of the different actors in the Scottish tax system, and also that the principle of avoidance should be reframed as effectiveness. Scottish government has taken up both of these suggestions.

Joanne Walker jwalker@litrg.org.uk

GENERAL FEATURE

Review of member continuing professional development records 2020 and 2021

The Professional Standards team have recently completed the review of member continuing professional development records for 2020 and key points are set out here together with notification of the upcoming review of the 2021 calendar year records.

In 2021, the Professional Standards team contacted a sample of CIOT and ATT members requesting a copy of their continuing professional development (CPD) records as part of routine compliance checks. The CPD regulations are available on both the CIOT and ATT websites (www.tax.org.uk/cpd_regs_guidance and www.att.org.uk/cpd).

All members coming within the scope of the CPD regulations should be prepared to provide their records on a timely basis if requested.

What were the findings from the 2020 CPD review?

In general, members had a good understanding of CPD requirements and good records in support of what they had done to meet those requirements. Some tips for members identified from the review are set out below:

Familiarity with the CPD requirements:

Most members understood whether they were within scope of the regulations but the following categories of members who are within scope sometimes appeared to be unclear about this:

- Individuals who are authors or writing tax material for some other purposes, for example as a lecturer or trainer, are considered to be working in tax and therefore are within scope.

- ATT members studying for CIOT exams are within scope of the regulations (albeit they will generally will have met their requirements through their CTA studies).
- Those in non-tax roles using the designations were not always aware of the rule change in 2017 bringing them within scope and had not therefore maintained records during the year.

Nature of the member's role and clear record keeping:
The best records provided set out what the member's role was, the particular areas they considered they needed to focus on and the CPD planned and undertaken to meet this requirement. Not all records supplied showed these aspects clearly.

Using the CIOT and ATT CPD forms (whilst not mandatory) supports members in undertaking CPD and keeping suitable records. If members provide records in another format it is helpful to include the planning and assessment of outcomes as part of the record. The forms are available on the CIOT website www.tax.org.uk/cpd_forms and ATT website www.att.org.uk/cpd.

Activities which count as CPD:
Understandably, member CPD records focused on tax training and more structured sources of CPD such as webinars and e-learning. A number of members commented on the fact that they had not been able to undertake face to face learning because of COVID restrictions.

As a result, some records appeared 'light' on documenting CPD undertaken. Follow up work undertaken found that in these cases members had simply not recorded relevant activities such as non-tax CPD on areas such as anti-money laundering or 'soft' skills such as management training and IT learning. There was also a tendency to not include CPD relating to training more junior colleagues, researching the technical answers to client queries, and developing and presenting training material.

Members are encouraged to review their records and ensure they include all CPD activities.

2021 Annual Review

The CIOT and ATT will be contacting members in Spring 2022 to request records for the year to 31 December 2021. Those members who are selected should ensure they promptly provide complete records for the year and anyone in any doubt over the requirements should refer to the regulations and guidance or contact the Professional Standards team using standards@tax.org.uk or standards@att.org.uk.

Helen Ballantine *hballantine@ciot.org.uk*

Recent submissions

CIOT		Date sent
Treasury Select Committee inquiry into Budget 2021	www.tax.org.uk/ref865	05/11/2021
Corporate re-domiciliation	www.tax.org.uk/ref870	13/01/2022
ATT		
Finance Bill Sub-Committee investigates basis period reform and uncertain tax treatment	www.att.org.uk/ref384	13/10/2021
LITRG		
Draft regulations: Tax conditionality for the hidden economy	www.litrg.org.uk/ref2578	17/11/2021
Draft Finance Bill 2021-22: Abolition of basis periods	www.litrg.org.uk/ref2580	23/11/2021
All Party Parliamentary Group for Entrepreneurship: Call for Evidence on the sharing economy	www.litrg.org.uk/ref2583	29/11/2021
Finance Bill representation: Normal minimum pension age	www.litrg.org.uk/ref2588	10/12/2021
House of Lords Committee: Basis period reform	www.litrg.org.uk/ref2590	16/12/2021

News from CIOT and ATT

Presidents praise input into Finance Bill

The CIOT and ATT presidents have praised the input of the organisations' technical teams into the current Finance Bill, saying it has made significant improvements to the quality and workability of the legislation.

CIOT President Peter Rayney said: 'The work of our technical staff and committees mostly takes place below the radar, in online meetings and preparing detailed responses to consultations, but the value of it is clear in the Bill now being debated by MPs. On areas from uncertain tax treatment to capital gains tax on mixed use property, our input has resulted in notable improvements to the legislation, to the benefit of taxpayers, their advisers and HMRC too.'

ATT President Richard Todd agreed, saying: 'The government has a good consultation framework which, so long as it is followed, enables ATT, CIOT and others to feed in the concerns of tax professionals where our knowledge suggests to us that proposals are flawed or could be improved. Our advice is not always heeded, and there is plenty in the final Bill for us to criticise, but there is also plenty we can point to as evidence of the value of our technical engagement. All involved in this work, staff and volunteers, deserve great credit.'

An update on the progress of the Finance Bill and scrutiny of it appears in this month's Technical Newsdesk.

Some Finance Bill 2021-22 successes

- **Notification of uncertain tax treatment:** Following representations from CIOT and others, the number of 'triggers' in the definition of what is an uncertain tax treatment was reduced from seven to two by HMRC, making the legislation significantly more workable.
- **Basis period reform:** The government's decision to defer this change until April 2024 to allow more time to implement followed representations to this effect from ATT, CIOT and LITRG.

> **There is plenty we can point to as evidence of the value of our technical engagement. All involved in this work deserve great credit.**

- **Emergency relief powers:** ATT argued in a Budget submission that it should be easier for the Treasury and HMRC to quickly put in place exemptions from benefit-in-kind charges in relation to employer-provided tests for infectious diseases in the future. We were pleased by clause 98 of the Bill, which enables such exemptions and wider temporary modifications of taxation of employment income to be made by regulations going forward.
- **Residential property developer tax:** The government listened to our call for aligning the new tax with corporation tax mechanisms and using existing statutory tax definitions as far as possible.
- **Economic crime levy:** Firms with less than £10.2 million in annual UK revenue are exempt from this levy, which otherwise must be paid by all firms regulated for anti-money laundering purposes. CIOT and ATT had pressed for this to be the case in the 2020 consultation, arguing that small firms already bear a disproportionate cost in relation to AML compliance.
- **Capital gains tax reporting window:** During an Office of Tax Simplification consultation in 2020, ATT, CIOT and LITRG all argued for an increase in the time allowed for reporting capital gains tax on residential property disposals from 30 days. OTS recommended an increase to 60 days and this is legislated in the current Bill.
- **CGT and mixed-use property:** Following representations from CIOT, changes were made to the legislation to clarify mixed use property rules. This is to ensure that where a gain arises to UK residents in relation to a mixed use property, only the portion of the gain that is the residential property gain is to be reported and paid in line with these deadlines.
- **Dormant assets:** CIOT comments on the draft legislation concerning the CGT treatment of assets applied to the expanded Dormant Assets Scheme were reflected in the final Bill.

Political update

CIOT, ATT and LITRG work with politicians from all parties in pursuit of better informed tax policymaking

In November:

- CIOT and LITRG held introductory meetings with the new Financial Secretary to the Treasury, Lucy Frazer.
- ATT, CIOT and LITRG briefed MPs and advisers from Labour's Treasury Team, including Shadow Chancellor Rachel Reeves and Shadow Financial Secretary James Murray, on the measures in the Finance Bill.
- Scottish Technical Officer Joanne Walker attended a pre-Budget roundtable with Scottish Finance Secretary Kate Forbes and Tax Minister Tom Arthur on behalf of CIOT and LITRG.

In December:

- We provided 16 written briefings to help MPs scrutinise the Finance Bill. They were cited 17 times during the debate by the minister and opposition spokespeople.
- We were cited in 42 places (CIOT 22, ATT 9, LITRG 11) in a House of Lords report on basis period reform and uncertain tax treatment.
- Colin Ben-Nathan, chair of CIOT's Employment Taxes Committee, and Meredith McCammond, LITRG Technical Officer, appeared as expert witnesses before a Lords committee on off-payroll working.

LITRG research helps to prompt umbrella companies review

The government has launched a call for evidence on the 'umbrella company' market, prompted in part by research carried out by the CIOT's Low Incomes Tax Reform Group (LITRG).

In March 2021, LITRG published a 150-page report taking a deep dive into labour market intermediaries, with a large focus on umbrella companies. The report received widespread praise. LITRG discussed some of the findings with HMRC and, in December, the government published a cross-departmental call for evidence on the umbrella company market which referred to the report.

The report's lead author, LITRG Technical Officer Meredith McCammond, commented:

'This consultative approach by government is a great opportunity for it to gather evidence about the actual and current problems with umbrella companies. This must include first-hand evidence from workers who have found themselves in a disguised remuneration scheme.'

ATT welcomes cautious approach to more frequent tax payment

ATT has welcomed HMRC's confirmation that it will consult further before moving to more frequent payment of tax for small businesses.

Jon Stride, Co-Chair of the ATT's Technical Steering Group, said: 'We have long-held concerns that any compulsory move to more frequent tax payments could have a negative impact on the cash flow and administrative burdens of small businesses. This would be particularly unwelcome at a time when many such businesses are still feeling the effects of the pandemic.'

ATT also welcomed the news that HMRC aim to raise awareness of the Budget Payment Plan, which the Association had encouraged the tax authority to do. HMRC also plan to make improvements to the Plan including increasing payment flexibility.

NOVEMBER 2021 EXAM RESULTS

On 26 January 2022, the CIOT and the ATT announced the results from their November 2021 exam sessions. The CIOT exams were taken by 1,008 candidates with a further 329 candidates who sat one or more papers on the ACA CTA Joint Programme (with ICAEW) and 23 candidates who sat a paper on the newest route to qualification, the CA CTA Joint Programme (with ICAS). In addition, 811 Tax Pathway candidates sat a combination of ATT and CTA papers. The ATT exams were taken by 776 candidates with an additional 811 sitting some ATT papers on the ATT CTA Tax Pathway.

The Institute President, Peter Rayney, commented: 'I would like to offer my very warmest congratulations to all the candidates who have made progress towards becoming a Chartered Tax Adviser as a result of passing one or more papers at the November 2021 examination session. 334 candidates have successfully completed all of the CTA examinations and we very much look forward to welcoming them as members of the Institute in the near future. Included in this figure are 75 candidates who were on the ACA CTA Joint Programme and 76 candidates who have now fully completed the ATT CTA Tax Pathway by passing the CTA element. We are also delighted that we have one candidate on the new CA CTA Joint Programme with ICAS who has completed the exam requirements for membership.'

The Association President, Richard Todd, commented: 'I am delighted to congratulate all the successful candidates from the November sitting of our exams. In total 1,438 papers were sat and 1,104 passes were achieved with 76 distinctions awarded for outstanding performance.'

Information regarding these results, including pass lists, can be found on the CIOT and ATT websites and on the Tax Adviser website.

In the news

Coverage of CIOT and ATT in the print, broadcast and online media

'The Low Incomes Tax Reform Group has warned taxpayers to be careful with companies who offer tax relief services.'
Daily Express, 23 November 2021

'The changes [to the Scottish Budget] mean those on the lowest income tax bands will pay £21.62 less than their counterparts in England, the CIOT said. But workers in the higher rates will pay substantially more when next year's rise in National Insurance is taken into account.'
The Times (Scotland edition), 10 December 2021

'ATT has long-held concerns that any compulsory move to more frequent tax payments could have a negative impact on the cash flow and administrative burdens of small businesses.'
Daily Express, 3 January 2022

'LITRG research has found a range of disguised remuneration schemes operated by rogue "umbrella" companies. LITRG warns umbrella workers to be on their guard.'
Financial Times, 9 December 2021

Welcome for waiving of late filing penalties

CIOT, ATT and LITRG welcomed the announcement from HMRC on 6 January that late filing and late payment penalties would be waived for one month for Self-Assessment taxpayers. This followed meetings and other engagement between professional bodies and HMRC in December and early January at which we presented evidence of the impact of coronavirus on advisers and their clients.

John Cullinane, CIOT Director of Public Policy, said that the announcement 'shows HMRC has listened and acted on the concerns of our members who report increased pressures on their workloads and significant staff absences because of the impact of the COVID pandemic, particularly the Omicron variant which is widespread during the peak filing period.'

HMRC said it had acted because tax advisers and accountants are at the forefront of advice for affected taxpayers but are dealing or likely to deal with staff absences in January because of the pandemic.

Fellows admitted

New CTA Fellows

We are delighted to confirm that the following became Fellows of the Institute through the successful submission of either a dissertation or a body of work during the course of 2021.

Dissertations

- **Rachael Dronfield:** The practical implications of the new residence nil rate band
- **Alistair Godwin:** Four points on hive-down and sales

Bodies of work

- **Katherine Ford:** Tax losses, 2nd edition, Claritax Books
- **Megan Saksida:** Inheritance tax – lifetime transfers and the death estate
- **Sofia Thomas:** Tax implications on family breakdown

Find out more about Fellowship of the CIOT here: www.tax.org.uk/fellowship

New ATT Fellows

The following Fellows were admitted on 9 December 2021:

Mr Nicholas Bundy, London
Mr Anand Chandarana, London
Miss Teressa Compton, Portsmouth
Mrs Priti Dhulia, Hounslow
Mrs Ann Elmer, London
Mr Arvind Makadia, Harrow
Mr James McClure, Jersey
Mrs Louise Metcalf, Sittingbourne
Ms Lauren Miller, Carnoustie
Mr Imran Mohiuddin, Romford
Mr Christopher Mutlow, Bishop's Stortford
Miss Rebecca Newman, Devon
Mr Donald Pearce-Crump, Aylesbury
Mrs Rebecca Porter, Cambridge
Mrs Petrell Powell-Bhoorasingh, London
Mr Assem Raja, Birmingham
Mr Shilun Shah, Haringey
M Amal Shah, Ruislip
Mr Luke Siger, St Albans
Mrs Julie Still, Lisburn
Mrs Catriona Street, Guernsey
Mrs Claire Ward, Ipswich
Miss Margaret Westmacott, Chatham

Find out more about Fellowship of the ATT here: bit.ly/3G33nhC

Interview
Sir Stephen Oliver QC

Former president, Tax Chamber of the First-tier Tribunal

Sir Stephen Oliver has been an active supporter of the Bridge the Gap campaign since its launch in 2015 and has played an important part in its development. His involvement with the tax charities actually goes back much further.

How did you get involved in the work of TaxAid and Tax Help?

I was a 'tax judge' when I first came across TaxAid and, some years later, Tax Help. Two things about them struck me. The first was how competently both charities answered the needs for advice and help for the great range of taxpayers who hadn't the means to pay. The second was the trust in and respect for both shown by the revenue authorities, who were able to clear up time-consuming and awkward situations, confident that these were being handled with professional integrity by the charities.

> **Both charities answered the need for advice and help for the great range of taxpayers who hadn't the means to pay.**

For my part, being responsible for the administration of the tax appeals system for nearly 20 years, the intervention of the two charities helped to prevent our lists being clogged up by appeals that were better settled by those charities working with HMRC.

My introduction came from David Brodie, who started TaxAid in the early 1990s. He invited me to come along and listen in to a morning's session at TaxAid. It was spellbinding. What was remarkable was how quickly the TaxAid representative managed to recognise and grasp each problem and, if needed, get straight through to HMRC and work out a sensible and mutually beneficial solution. Misunderstandings were cleared up. I could hear how the stress and the worry of each client was relieved by the end of their session.

What did you see as the need for TaxAid and Tax Help?

The start of my involvement was a time when penalties for non-compliance had been stiffened up. A result of this was that small defaults could, if left uncorrected, end up with large demands by the revenue authority. There was nothing the tribunals could do. But a careful explanation by a TaxAid representative, for example, often prevented penalties being imposed. What was more, I was able to explain to the administrative staff of the tax tribunals how potential appellants with muddled or seemingly hopeless grounds of appeal might be persuaded that an approach to TaxAid could be more productive than pressing on with a formal appeal.

As a judge, how were you able to help?

One occasion was at the time of the arrival of the Human Rights Act.

Article 6 confers the right to a fair trial by an independent tribunal. I spoke and gave lectures at events promoted by TaxAid at the time. Then I became directly involved as a trustee of TaxAid. I attempted to contribute from my own judging experience.

A careful explanation by a TaxAid representative often prevented penalties from being imposed.

Both HMRC and the tax profession had a common interest in the work of the two charities, which were originally funded entirely by the large firms of accountants and by HMRC. I remained a trustee for ten years, my colleagues being tax professionals and retired members of HMRC.

TaxAid and TaxHelp had operated quite separately until about 2014. They then came together under the umbrella of the Bridge the Gap campaign. Since then, they have shared the administration. I and my colleague Penny Hamilton, who now chairs Tax Help, were able to recruit the support of the lawyer's side of the tax profession, as well as judges from the Supreme Court and the Tax Courts. We all joined up with the rest of the tax profession to launch and sustain Bridge the Gap.

How do you see the future?

Both charities 'belong' to the tax profession in all its manifestations. Their presence and their work provide a real service to HMRC, just as they do to individuals affected by the tax regime and who do not have the resources to pay for help and advice. For the future, I hope that the trust between the charities and HMRC continues to exist. Their quiet and unobtrusive work is a huge and essential support for the tax system.

The first 25 years of Sir Stephen's professional career were spent at the Tax Bar, as a tenant of Pump Court Tax Chambers. He was knighted for public services in 2007; became judge of the Upper Tribunal and president of the First-Tier Tax Chamber in 2008; and retired from the bench in 2011.

If you would like to become involved in the work of the charities, please contact Alice Devitt at Alice@taxaid.org.uk.
Interview by Alison Lovejoy

A MEMBER'S VIEW

Gemma Thake

Tax Director, Price Bailey

How did you build your career in tax?

I have worked in tax for nearly 15 years now. I originally started my career as a graduate in audit at a Big Four firm and moved over to tax when I changed firms. I then worked in the Business Tax team at a leading independent firm in Cambridge for 10 years, before moving to Price Bailey in 2017.

I first qualified as a Chartered Accountant with the ICAEW in 2010. After enjoying several exam free years, I started studying to become a Chartered Tax Adviser slightly later in my career once I had progressed to manager.

What benefits does your CTA qualification bring to your employer?

The CTA adds credibility to our work and expertise and it is widely known as the gold standard tax qualification. The exams also provided me with an awareness of other taxes that I may not otherwise have learnt from my specific role, although they can be really important when advising clients or spotting opportunities to refer work internally.

Clients look for advisers they can trust and one of the ways to demonstrate this to a new client is being able to show that you are professionally qualified and keep up to date through continuing professional development, which is a requirement of being a CIOT member.

How would you describe yourself in three words?

At work – ambitious, adaptable and professional.

What advice would you give to someone thinking of doing the CTA qualification?

The CTA qualification is the most prestigious tax qualification in the UK and demonstrates both technical excellence as well as professional integrity. The exams are therefore demanding, although achievable with hard work and commitment to study. I hope that prospective students of all backgrounds and stages of their career will consider the CTA qualification to develop their technical expertise and career generally.

What are your predictions for tax advisers and the tax industry in the future?

Despite a move towards automation and a focus on Making Tax Digital, I think tax advisers will always play a key role in advising clients. Tax legislation is complex and ever changing, so it is not for the most part something that can be readily explained to a client by a computer.

It is also an interesting time for the tax industry, as the UK is facing its highest tax burden in generations as a result of the Covid-19 pandemic. I think there will be a continued focus on balancing tax rates and changes with economic recovery in the near future.

It's OK not to have your entire future planned out. Just enjoy what you're doing today.

What advice would you give your future self?

It's OK not to have your entire future or career planned out. Just enjoy what you're doing today.

Tell me something about yourself that others may be surprised to know about you.

I failed an ACA exam and it didn't destroy my career – despite thinking it would at the time!

Gemma Thake, Tax Director at Price Bailey, is a Chartered Accountant and a Chartered Tax Adviser specialising in corporate tax.

Contact

If you would like to take part in A Member's View, please contact Jo Herman at jherman@ciot.org.uk

ADIT webinar programme continues to grow

With a host of pressing issues on the international tax agenda, from the digital economy to climate change to the continued effects of the Covid-19 pandemic, it's never been more important for tax professionals around the world to get involved in the debate. Fortunately, it's also never been easier to hear the views of international tax thought leaders and contribute to the discourse on the topics that matter to you.

Led by experts from across tax practice, industry and government and covering wide-ranging technical subjects across multiple tax jurisdictions, our ADIT International Tax Webinars are a great way to keep up with the latest global tax developments. Highlights have included the recent panel session that we delivered in association with Tax House Nigeria, which explored Pillar One and Pillar Two from the vantage point of leading tax experts Prasetyono Hendriarto, Kehinde Kajesomo, Lolade Ososami, Prerna Peshori and Advocate of the Supreme Court of Nigeria Professor Abiola Sanni, in emerging countries across Africa and Asia.

Our 2022 International Tax Webinar series will build on the topics encountered in previous sessions, including corporate, personal and indirect tax developments as experienced by professionals, employers and clients. There is a nominal fee to register and attend each of these webinars, with free entry for those ADIT qualification holders who are CIOT International Tax Affiliates.

Meanwhile our newly launched ADIT Network Webinars, organised with the help of our ADIT Champions and featuring insights from members across national and regional ADIT communities, give international tax professionals in selected countries the opportunity to connect and discuss the latest tax topics in their locality. Unlike the International Tax Webinars, entry to the ADIT Network Webinars is free to all participants.

To find information about upcoming ADIT webinar sessions, access previous recordings, or suggest a topic for a future webinar, visit www.tax.org.uk/adit/events.

Worshipful Company of Tax Advisers

Is giving on the cards?

Guilds and Livery Companies have a long, long history of supporting charitable causes. As many readers may know, the tax profession has its own Livery Company, the Worshipful Company of Tax Advisers (WCoTA). If you look closely at our coat of arms, which was granted to us in 1999, the cross represents the Roman X (the number ten), indicating the tithe or tenth of annual produce or earnings paid as a tax in ancient times.

One of the Company's primary aims is to support and fund charitable and benevolent causes. To achieve this, the Company's Freemen and Liverymen support two related charities: The Tax Advisers' Charitable Trust (TACT); and the Tax Advisers' Benevolent Fund (TABF).

TACT is a general charitable fund that supports a number of causes in both the City of London and Greater London. This includes giving funds to The Lord Mayor's Appeal, St John Ambulance, Magical Taxi Tours, certain London Boroughs for the provision of reconditioned laptops to school children, and Bridge The Gap.

TABF, in turn, supports the education of tax professionals and aspiring tax professionals if they have the misfortune to find themselves in straitened circumstances. Importantly, it also supports members of the tax profession, both personally and professionally, if they find themselves in times of hardship.

As you might imagine, 2020 and 2021 saw a dramatically increased need for our charities to be able to make grants and donations to a variety of applicants and deserving causes. Coincidentally, 2020/2021 also saw the WCoTA and its charities celebrate their 25th anniversary and we set out to raise an additional £25,000 to increase the amount of grants and donations we were able to make.

We have written previously highlighting our sponsored walk. One other fund raising project was to commission a bespoke twinset of playing cards. All the court cards reflect a variety of quirky taxes through the ages and the ace of spades naturally reflects the duty paid that used to be stamped on the ace of spades. If you would like to support our charities and the causes they support, and would like one or more of these packs of cards at £20.00+pp, please email lorraineparkin6@gmail.com or go to our website at www.taxadvisers.org.uk where you can locate an order form.

In April we will be writing again about the WCoTA and inviting you to consider applying for membership. If you would like to be involved with the Company and its charities why wait until April? I would encourage you to go to our website: and apply to be part of our community today!

Lorraine Parkin is Treasurer of the Tax Advisers' Charitable Trust and Tax Advisers' Benevolent Fund

New member of ATT Council

Toyin Oyeneyin

Toyin Oyeneyin BA(Hons) MSc CTA ATT joined ATT Council in December 2021. She has a variety of experience across practice and industry, accounting, tax and finance.

Toyin became a member of the ATT in 2012, obtaining multiple distinctions in her exams, and became a Chartered Tax Adviser in 2014. In 2015, she moved to London, joining PwC as a Senior Manager.

She currently works as a tax specialist and product manager for Octopus Investments, where she is the product manager for two tax efficient investments and the technical tax specialist across all other tax efficient investments. She also works on broader group wide tax matters.

Toyin has been a long term contributor to the tax community. She is the Chair of the Joint ATT/CIOT New Tax Professionals Committee, which has a focus on supporting students and members in the first 10 years of their career. She has also served on the *Tax Adviser* Magazine committee since 2016.

In her spare time, she enjoys playing the violin, salsa dancing, travelling and is a self-proclaimed movie buff and a climate change enthusiast.

Taxation
Recruitment
Specialists

Anne Mills Recruitment

Mobile: 07801386646
Email: info@annemillsrecruitment.co.uk

Mid Market Transactions Tax – Director/S Manager/Manager

Birmingham/Midlands – £market rate

Fantastic career opportunity to work in the dynamic deals advisory area with this major accounting firm. The opportunity to engage with active companies of all sizes is underpinned by working within a thriving, close knit team, with innovative structures that enable experience to be gained in a supportive environment, whilst maintaing a good work/life balance. Rapid career development opportunities at all levels.

Mixed Tax Advisory Manager

South East Midlands – £depending on experience

This top 20 firm has achieved significant growth through innovation and dynamism. We are looking for a talented individual keen to develop their advisory experience, supported by the senior team. The firm's emphasis on people development ensures plenty of scope to develop areas of interest. Initially a flexible mix of advisory and compliance, that can evolve with the successful individual.

Corporate Tax Senior Manager

Nottinghamshire – c£70,000 + benefits

This is ideal for a Senior Manager who enjoys client contact and managing a varied client portfolio. Our client is a successful boutique business, and this key role covers providing advice on all aspects corporate tax advisory matters to mid markets clients, as well as in discrete areas such as TP, CA's , due diligence, treaty exemptions and general advisory work.

VAT Lead Role

Birmingham – up to £100,000

This business has an outstanding growth record delivered by a talented tax group. For an experienced and broadly based indirect taxes specialist this role could be the one you've been waiting for. Building on an existing work flow and varied client base, you will deepen client relationships and work in a superb, supporting friendly environment. No timesheets!

Corporate Tax Manager/Asst Manager

Birmingham – £ big 4 equivalent

This corporate tax team works across a broad range of transactions, and, with their outstanding (and award winning) success now have opportunities for 2 additional managers. The team draws on a broad mix of experience and specialism but ideally you will have 4-5 years experience in a corporate tax role in practice/ industry/mix of both and be an ambitious enthusiastic team player.

Personal Tax Specialist / Assistant Manager/ Manager

Nottingham/Lincoln – £competitive package

An experience personal tax compliance specialist is being sought by this friendly regional firm. Working alongside members in the small Private Client Team, there is scope to pitch the work to suit your experience and areas of intertest. This bias can be towards more advisory or compliance to suit. The team has been growing and there is plenty of scope for progression.

Private Client Lawyer

Birmingham – £competitive package

Excellent opportunity to join a well-established, thriving Private Client Team. Specialising in areas such as IHT, Estate Planning, CGT, Income Tax planning, Non-doms and Non-residents tax, you will be involved in developing the client base and with scope to play a key role in the future of the business. Ideally 3+ years PQE. Exposure to property investment also an advantage.

R&D Tax Manager/Asst Manager

Birmingham – £negotiable, depending on experience

Superb opportunity to join a talented tax team and help further build the successful Innovation Tax Relief service line. Clients range from start-ups to SME's and large corporates, dealing with R&D SME schemes and RDEC across all sectors. You will have a strong technical background, 4-5 years' experience in patent box or R&D tax. Scope for career development.

Tax Partner (or designate)

East Midlands – POA

For an entrepreneurial Tax SM/Director or existing Tax Partner this represents and exceptional opportunity to join a successful independent firm and share in the financial rewards. You will have a demonstrable background in providing tax advice to a mid market corporate client base, have excellent client skills, be interested in a genuinely entrepreneurial opportunity. Outstanding prospects.

Share Valuations Senior Manager/Manger

Birmingham – £big 4 equivalent packages

Due to the growth of the Valuation and Share Valuations Team, this excellent firm has an opportunity for an enthusiastic and experienced individual to assist and lead the service line. The team handles a broad range of valuation projects across sectors for SME's, top-tier and mid-tier private equity clients. Valuations cover all UK and international tax purposes across all taxes. Competitive package and great prospects

Georgiana Head Recruitment

MEET YOUR ADVISERS

GEORGIANA HEAD

Director

Tel: 0113 426 6672
Mob: 07957 842 402

georgiana@ghrtax.com

ALISON TAIT

Director

Tel: 0113 426 6671
Mob: 07971627 304

alison@ghrtax.com

Mixed or Corporate Tax
Lancashire – £excellent

Local office of a National firm seeks a tax senior for mix of compliance and advisory work. This is a mixed tax role with a corporate tax bias. You will also do some personal tax work - mainly for the owner managers of the businesses that you will deal with on a day to day basis. This is a small friendly team that has the resources of a larger firm. Good quality client base of dynamic OMB's. You will get the chance to work on project work with more senior staff - so this isn't just compliance. This role can be part remote worked and there can be flexibility around hours. Study support for CTA.. **Call Georgiana Ref: 3193**

In-house Group Tax Manager
Cheshire – c £65,000 + benefits

In-house role for a Group Tax Manager based in Alderley Edge. This major property group seeks an all-round corporate tax advisor who is interested in also doing some treasury work. In this role, you will help the share-holders and the business with tax planning advice and will manage the compliance and reporting for the group. As the lead tax person, you will have responsibility for both direct and indirect tax. Reporting to a Financial Controller, this mainly office based role would suit a qualified tax specialist with strong compliance and reporting experience. **Call Georgiana Ref: 3170**

VAT in a Law Firm
London – £100,000 to £130,000

This is a really exciting opportunity for a bright, technical VAT Practitioner to join a large international law firm. In this role, you will work closely with a partner on a wide range of VAT and broader indirect tax advice. This will include real estate transactions, financial services advice, outsourcing projects, every manner of technical report. This would suit someone who genuinely has a passion for VAT and technical writing. Perhaps you have a law degree and the LPC and always wanted to work in a law firm? Would suit a CTA or a qualified lawyer. **Call Georgiana Ref: 3193**

VAT Accountant or Manager
Bradford – £excellent

Our client is an international group with a shared service centre based in Bradford. This friendly team seeks a VAT specialist who has strong accounting skills. In this role, you will help with VAT compliance and accounting work for UK and overseas companies. You will need sound IT skills to help you navigate systems such as Oracle to ensure timely preparation of month end and quarter end reporting. You will also need strong communication skills as you will work closely with other teams. Hybrid working, free parking and scope for progression make this a great role. **Call Georgiana Ref: 3181**

Transfer Pricing
Various Locations – £excellent

Transfer pricing specialists sought by this busy Big 4 team. Range of levels and offices considered from Assistant Manager to Senior Manager and locations including Manchester, Leeds, Edinburgh, Glasgow or Newcastle. This firm has one of the largest TP teams in the UK, and deals with a wide variety of work for some of the world's largest corporate groups, including advice around mergers and acquisitions. Great flexible or part time working on offer and a mix of home and office working. This is a friendly team with great personal and professional development opportunities. **Call Georgiana Ref: 3183**

Capital Allowances
Harrogate – £excellent + benefits

This is an opportunity to do capital allowances work outside of a traditional accountancy firm setting. Our client is a long established firm of specialist capital allowance consultants providing a service to accountants and property owners throughout the UK. You may be a surveyor or CTA qualified – but key is you will need proven capital allowances experience. You might currently work in a Big 4 or Top 20 and be looking for something different. Would also consider a more junior surveyor looking to specialise. **Call Georgiana Ref: 3167**

www.georgianaheadrecruitment.com

Tax Manager
Essex – to £80,000 + benefits

You will be responsible for managing the tax team and growing the existing tax work streams across the practice. The client base is diverse, ranging from HNWI to Directors of SME's operating in a variety of industries. This is a mixed tax role, slightly weighted towards private client work. You must have an awareness of all taxes and how they interact, specifically VAT, CGT, income tax and corporate tax. You should be an FCA/CTA qualified, with a minimum of 5 years' PQE. **Call Alison Ref: 3198**

Tax Planning Specialist
Chester – £excellent

This is a fantastic opportunity to get exposure to complex technical work covering all of the main taxes. This includes advising on transactional tax issues, sale/exit planning, structuring family trusts, property tax planning, advising on residence and domicile for tax purposes and indirect tax issues. Candidates from recently qualified to senior manager level will be considered. Above all, you must have a passion for tax, great communication skills and a strong attention to detail. **Call Alison Ref: 3182**

Corporate Tax Director
Greater London – to £100,000

A fantastic opportunity for a corporate tax director to manage and deliver corporate tax compliance and advisory services to a client base made up of OMB's, SME's and entrepreneurs. You will advise on areas such as corporate restructuring, succession planning, employee share schemes and share ownership trusts and profit extraction from family businesses. You will manage the client relationship and coach and mentor junior colleagues. Strong communication and problem-solving skills are essential. **Call Alison Ref: 3175**

In-House Group Tax Manager
Manchester – to £75,000 + benefits

You will monitor the group's position under HMRC's business risk review regime and actively maintain the group risk register. You will coordinate the SAO process, prepare the online tax strategy document and take responsibility for UK tax compliance across corporate tax, indirect tax, employment tax and international taxes. This is a fantastic opportunity for an ACA/CTA qualified manager or senior manager looking to move into industry or for someone looking to progress to Head of Tax. **Call Alison Ref: 3186**

Transfer Pricing Specialists
North of England / Scotland – £excellent

The northern transfer pricing team in this firm has doubled in size recently and there is a wealth of work coming in. Your primary responsibility will be to manage a portfolio of existing clients and assist with the development of targets in order to ensure the continued growth of the business. You should be ACA/CTA qualified and with a significant amount of transfer pricing experience. You must also be comfortable with man management and business development responsibilities. Good prospects for career progression. **Call Alison Ref: 3190**

VAT Senior Manager
Manchester – £excellent

You will provide VAT advisory services for a wide range of clients across a variety of sectors. You will have regular involvement with indirect tax planning and complex indirect tax compliance issues and will be expected to lead large scale projects. You will also coach and develop junior team members and actively build your network of contacts and referrers. You must have UK VAT experience and an in-depth knowledge of key technical issues in this area. **Call Alison Ref: 3192**

YOUR TAXATION RECRUITMENT SPECIALISTS